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THE LEGALISATION OF THE PROFESSIONAL FOOTBALLER:
A Study of Some Aspects of the Legal Status and
Employment Conditions of Association Football
Players in England and Wales From the Late
Nineteenth Century to the Present Day,

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PREFACE

This Ph.D. began when I was a full-time student in the School of Law, University of Warwick, funded by a Social Science Research Council grant, from October 1974 to March 1975. Since April 1st, 1975, it has been conducted on a part-time basis while I have been employed as a Lecturer in Law (Senior Lecturer since 1979) in the Department of Law, Manchester Polytechnic. Part-time study leave granted by the Polytechnic enabled me to re-register as a part-time postgraduate student in 1981.

DECLARATION

I declare that no part of this thesis has been used before apart from some material which is included in "Some Aspects of Legal Regulation in the Post-War Football Industry", a paper which I delivered to the British Sociological Association/Leisure Studies Association Joint Study Group Workshop held at Sheffield Polytechnic in June 1982 and which is published in the collection of the workshop papers, Alan Tomlinson (ed): EXPLORATIONS IN FOOTBALL CULTURE (Brighton Polytechnic, 1983).

ABBREVIATIONS

F.A. Football Association

F.L. Football League

P.F.A. Professional Footballers' Association

F.L.M.C. Football League Management Committee

SUMMARY

The argument in this thesis maintains that despite the official recognition of professional football players in England by the highest law-making body within the sport (the Football Association) in 1885, it can be seen with the benefit of a century of hindsight that this act of legislation was merely a step towards legal rights for footballers which are more generally recognised in other branches of industry. It is further argued that the history of the legal status of professional footballers cannot be adequately conceptualised by the frequently employed schema 'illegality - legality - freedom', representing a three stage teleological evolution of the professional player as outlaw prior to 1885, then as legitimate and respectable between 1885 and 1963 and finally as free and bourgeois from 1963 onwards. The denial of such a fictitious history involves the detailed historical and sociological investigation of the various, often contradictory, legal and social statuses of the professional footballer since his initial constitution as a legal subject in the late nineteenth century. Such investigation involves the major theoretical question in the study of law, that is, what exactly it is that is involved in legal 'recognition': in other words in being, or not being, a legal subject or legal 'person'. It is hoped that this thesis sheds some light on this question from a general and specific viewpoint.

" 'You said you were free.' 'I am free,
and not free,' said Juan."

Malcolm Bradbury: WHO DO YOU THINK YOU
ARE? (Arrow, London, 1979), page 104.

INTRODUCTION

Drawing on work within the social and human sciences this study attempts to investigate aspects of the role of law in the regulation of professional football in England and Wales from the late nineteenth century to the present. It concentrates on aspects of legal regulation: that is, legislation, court decisions, administrative tribunal decisions and, especially, the internal administrative rules of the sport's governing bodies.¹ However, it is founded on the awareness of other crucial, non-legal components of social relations. In that sense it is a contribution to the 'contextual' study of law and goes well beyond the mere exposition of the relevant legal doctrine. Further, it is set against a backcloth of the process by which a "traditional ball game with a long history in British culture has been transformed into a modern, regulated and professionally conducted sport, reflecting division of labour and organisational hierarchy,"² and assumes a certain acquaintance with some similar developments in rugby football³ and baseball⁴. Finally, it is explicitly not a study of the 'laws of the game'⁵ in professional football except in so far as they are interpreted by referees and thereby give rise to club, League and Association disciplinary procedures, and, in some instances, court cases.

The specific conceptual object of the work presented here is, however, not the regulation - legal or 'social' - of professional football in general but the century long historical development of the player as a legal subject. In order to investigate the elements of such a history it has been necessary to look at a number of 'discourses'⁶ about football - legal, official, sociological, geographical,

economic, popular and so on. Indeed, consideration of the way in which football players are conceived of in written, spoken and visual 'representations' of professional soccer makes up the bulk of the argument. Consequently, the research material has been largely drawn from a wide variety of 'texts' frequently going well beyond conventional academic sources. These consisted of, predictably, statutes, press and law reports of legal cases in courts and administrative tribunals, players' standard form contracts, football club rules, rules and publications of football's governing bodies, and official reports on aspects of professional football.⁷ However, they also embraced less obvious material such as: the often 'ghosted' biographies of football players, managers, officials and administrators; official, and unofficial, club histories; novels about football⁸; and football magazines, ranging from those aimed at the popular youth market such as SHOOT, MATCH WEEKLY and FOOTBALL MONTHLY through to the now defunct satirical periodical FOUL⁹ and the supposedly 'adult-oriented' alternative of FOOTBALL KICK!¹⁰ In addition I have drawn on my own collection of football match programmes from 1974 to 1983; as Phil Shaw has argued "changes in the sport over the years"¹¹ and "changes in society"¹² can be traced through a rigorous exploitation of this popular pastime.

Although it might be objected that there is comparatively little academic material on the professional football industry when set alongside accounts of, for instance, manufacturing industries, there has been something of an explosion of interest from a number of disciplines in the past decade. Economists, historians, geographers, psychologists, lawyers and sociologists amongst others

have trained their expert eyes onto the 'field' of football. This discursive explosion is itself of some note and part of the purpose of this study is to explore the conceptions and constructions of professional footballers, and to a lesser extent football in general, within these various academic disciplines. However, the discourses about football which 'speak' to most people rather than a narrow elite are those secreted and embedded in the various mass media, and therefore there has been a considerable concentration in this work on oral, written and visual representation of football players in the press, both national and local¹³, and radio, television, video and film. This material was necessarily wide-ranging: from historical film archive material on professional players and crowds¹⁴ and Open University programmes¹⁵, to national, local and sporting papers to radio and television sports¹⁶, news and documentary¹⁷ programmes. Much of it is used here as detailed background material.

Nevertheless the discursive realm has not been the sole concern of this work. The social and historical study of the work relations of the football industry has been notoriously unproductive up to now, and though it is hoped that some of the investigations undertaken in the course of preparation of this current work may throw some light on the nature of, for example, player organisation, recruitment, disciplinary procedures and other aspects of the relations of the sport, there is no suggestion that any comprehensive account of work relations in professional soccer could be offered. There is certainly an acute need for empirically based but theoretically sensitive accounts of, for instance, the historical role of the Players' Union¹⁸ and its relationship with its members and the employers of labour in the

industry, not to mention the changes in 'work' practices in the industry, especially since the Second World War.¹⁹ But there are enormous barriers to doing the necessary ethnographic research, for professional football is a particularly difficult arena in which to achieve an authentic participant observation stance.²⁰ Compare, say, Eamon Dunphy's 'insider' account of one of his employers²¹ with middle-brow journalist Hunter Davies'²² much criticised²³ year in the life of Tottenham Hotspur.

Furthermore, it is well established that historically based research into football clubs themselves is difficult simply because of these limited liability companies' reluctance to keep records or allow access to them if kept.²⁴ At one First Division club which I visited as part of the field work for this study this was graphically illustrated by my interview with the club's 'curator' who was specifically appointed to cater for those interested in the 'past' of the club but was clearly of the opinion that this involved merely preservation of trophies, international caps, personal memories of old players and so on.

Interviews which were conducted for the study were largely unstructured and mainly focussed on professional players from a number of clubs from all Divisions of the Football League who conveyed a wealth of background information about, and current responses to, such important contemporary issues as the changing social and legal status of the player and the modern regulation of soccer, both on and off the field. On this latter subject observations of, and interviews with, police officers responsible for 'crowd control' at a number of Football League grounds was also invaluable. Finally, for the history of the role of the Players' Union, which occupies a central place in the content of this study,

interviews of some length were conducted with the holders of the positions of Secretary and Chairman of the Association from 1974 to 1983 with the exception of Derek Dougan²⁵ - namely Cliff Lloyd, Gordon Taylor, Alan Gowling and Steve Coppel (see Tables 1.1 and 1.2 in Chapter 2). The Association also granted me access to their collection of papers (undergraduate and postgraduate theses on players' contracts, court transcripts, official reports etc.) and records.

The academic context of this work also requires some preliminary explanation. Its overall generic discipline is the sociology of law, designated variously on academic courses as 'law and society', 'socio-legal studies' and 'sociology of law' or as a sub-discipline of sociology. The field of the sociology of law has experienced both a rapid growth and shifts in its boundaries even since this study was first conceived in 1974, and the present work inevitably reflects, and also reflects on, such changes. Although this is its major disciplinary boundary it additionally seeks to cut across a series of debates originating in other fields: for example, the criminological literature on soccer hooliganism; the problems of adequately conceptualising social class mobility and 'consciousness'; problems of an industrial relations nature such as the employers' unilateral decision making and restraints, players' perception of themselves as 'workers', 'professionals', 'sportsmen' and so on; and lastly, questions of, and different conceptions of, and relations between sport and society. In particular this latter area of 'sports' or 'leisure' studies which has emerged as a discipline in its own right, however problematically,²⁶ in the last few years provides a further diverse context for the study of the player as legal subject from the 1880's to the 1980's.

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4. see David Q. Voigt: AMERICAN BASEBALL, Vol 1: From Gentlemen's Sport to the Commissioner System (University of Oklahoma Press, 1966) and AMERICAN BASEBALL, Vol 2: From the Commissioners to Continental Expansion (University of Oklahoma Press, 1970).
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6. see Chapter 1 for discussion of this fashionable concept.
7. see Bibliography and Appendix 2 and 3.
8. e.g. Gordon Williams and Terry Venables: THEY USED TO PLAY ON GRASS (Mayflower, 1973).
9. see Andrew Nickolds and Stan Hey (eds): THE FOUL BOOK OF FOOTBALL No 1: The Best of FOUL, 1972-1975 (Foul Publications, 1976) and Johnathan Croall: DON'T SHOOT THE GOALKEEPER (Oxford University Press, 1976).
10. complete with semi-nude girl centrefolds and right-wing editorials it is soccer's answer to PENTHOUSE.
11. COLLECTING FOOTBALL PROGRAMMES (Granada, 1980), page 16.
12. ibid., page 20.
13. press cuttings were taken between 1974 and 1983; see Bibliography.

14. the Department of Manchester Studies, Manchester Polytechnic allowed me facilities to study this.
15. "Soccer Hooliganism" on the Social Psychology course first shown in 1976, and also "Football on TV: Constructing the Spectacle" and "The People's Game?" on the Popular Culture course first shown in 1982; the Educational Services Unit, Manchester Polytechnic, allowed me facilities to view videotapes of these BBC programmes.
16. BBC's MATCH OF THE DAY and Granada's MATCH TIME programmes were monitored during the period 1974 to 1983, as well as BBC's FOOTBALL FOCUS and ITV's ON THE BALL.
17. see Ian Taylor "On the Sports Violence Question: Soccer Hooliganism Revisited" in Jennifer Hargreaves (ed) : SPORT, CULTURE AND IDEOLOGY (Routledge and Kegan Paul, 1982), pages 161 and 192 for comment on the proliferation of documentary coverage of soccer.
18. I have drawn heavily on two of the works to date which rely on substantial material culled from the records kept by the Players' Union, namely Braham Dabscheck: "'Defensive Manchester': A History of the Professional Footballers' Association" in R. Cashman and M. McKernan (eds): SPORT IN HISTORY (University of Queensland Press, 1979), and Tony Mason: ASSOCIATION FOOTBALL AND ENGLISH SOCIETY 1863-1915 (Harvester Press, 1980).
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21. with editor Peter Ball: ONLY A GAME? The Diary of A Professional Footballer (Penguin, 1977).
22. THE GLORY GAME (Sphere, 1973).
23. see Derek Dougan: DOOG (All Seasons, 1980), page 6.
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25. He declined an interview as he was no longer associated with the P.F.A., but I corresponded with Dougan and relied heavily on: Dougan, op. cit., Derek Dougan and Percy Young: ON THE SPOT: Football As A Profession (Stanley Paul, 1975), and Derek Dougan: HOW NOT TO RUN FOOTBALL (All Seasons, 1981) for accounts of his period as Chairman of the Association from 1970 to 1978.
26. see Jennifer Hargreaves: "Theorising Sport: An Introduction" in Hargreaves (ed) op. cit.

CHAPTER 1: SUBJECTS IN LAW

"It is intended to apply the law not so much to a real body capable of feeling pain as to a juridical subject . . ." ¹

The argument presented in this thesis can be briefly summarised. It is maintained that despite the official recognition of professional footballers in England by the Football Association - the highest 'law-making' body within the sport - in 1885, it can be seen, with the benefit of almost a hundred years of hindsight, that this act of legislation was merely a step towards more generally recognised legal rights for employees. Moreover this journey of the professional footballer towards what is described as freedom ("freedom of contract", "freedom of movement" or merely "freedom"), is far from complete. Further, it is contended that footballers, like other categories of employees, cannot simply undergo a transformation through the process: (a) illegality, followed by, (b) legality which signifies a state of, or move towards (c) freedom. The history of the legal status of the professional footballer in England, it is argued, cannot be adequately conceptualised by this frequently employed schema, 'illegality - legality - freedom'. The denial of such a fictitious history, involves the detailed historical and sociological investigation of the various social and legal statuses of the professional footballer in England since his conception as a legal subject in the late nineteenth century. Such investigation involves the major theoretical question in the study of the law; namely, what exactly it is that is involved in legal 'recognition', in other words, being, or not being, a legal subject, or legal 'person'.

Through an analysis of various stages in a process which I will describe as the LEGALISATION of the professional footballer in England - the act of legislation in 1885, the institution of the maximum wage and the retain and transfer system, and the campaigns for their abolition, etc - it will be seen that the professional footballer as legal subject emerges, and remains, on the social terrain in a contradictory position. He occupies, as analysis will show a space as a legal subject which is 'free' and yet, simultaneously 'unfree'. His constitution as a legal subject with rights and duties involves BOTH a 'freedom under the law' and a form of 'enslavement'. The successful outcome of a court case or the finalising of an agreement with employers does not necessarily result in a change of legal status which is effective at the level of everyday relationships in the industry. Neither does it, however, simply mean that legal change is mythical or that there is some inevitable split between 'law in books' and 'law in action' as American Realist jurisprudence and much sociology of law has argued. The historical development of legal subjectivity and legal effectivity cannot, as will be seen, be conceived in such terms.

THEORIES OF LEGAL SUBJECTIVITY

It is the problem of how to account for legal subjectivity - for 'subjects in law' - that has proved to be one of the most intractable theoretical difficulties in legal philosophy and sociology of law. Subjectivist sociological perspectives, namely symbolic interactionism and ethnomethodology, inevitably operate with a conception of the constitutive subject. Such thinking is criticised here as empiricist for it presupposes a knowing subject and a given, known real object; for these perspectives, the subject's direct experience

of the object produces 'true' knowledge. Many schools of jurisprudence and varieties of Marxism are caught by this same criticism. The danger involved is in the assumption of a pre-constituted human identity, prior to the individual's entry into the social world, from which knowledge originates, and social relations emerge. Other theoretical projects, namely Althusserian Marxism, Lacanian psychoanalysis, some semiotics, and the work of Michel Foucault have attempted, albeit unsatisfactorily in their different ways, to produce an account of subjectivity in general, and often by implication legal subjectivity in particular, which does not fall into the empiricist mould, and therefore theorises the CONSTITUTION of subjectivities.

Louis Althusser's essay on "Ideology and Ideological State Apparatuses"², influenced in an ambiguous way by the psychoanalyst, Jacques Lacan, staked out one particular alternative to the empiricist conception of subjectivity. In it Althusser argued that all ideologies function by and through the constitution or production of the subject and outlined the process by which in his view, ideological discourses - of which law is one - "interpellate" (literally hail) its subjects. Although it has been argued that Althusser's theorisation of ideology as a representation of men's lived relation to their conditions of existence has had some positive elements³ and that therefore it remains an important starting point, the conception of subjectivity which it involves is unsatisfactory and the theory of ideology which employs the concept of interpellation in the Althusserian sense has been rejected⁴ or substantially modified.⁵ As against the idealism of the constitutive subject notion, Althusser has been accused of producing a concept of the subject as agent or bearer of socio-economic processes which suffers from a mechanistic structuralism.⁶ As Hall has pointed out, in such theorising:

"the subject' is left as an empty space.

The Cartesian subject has been displaced:

but what replaces it has not been adequately theorised."⁷

Neither the view that individuals are simply free agents or that they are economic agents, then, will suffice. Conventional frameworks of both idealism and materialism are found wanting in theorising the subject.

It has been necessary, then, to seek a theory of the construction of the subject which avoids conceptualising the subject as either constitutive or as agent or bearer of socio-economic processes. What is demanded in the wake of Althusser's failure to overcome the problems satisfactorily and to pose the notion of the subject in a way that could lead to resolution of the difficulties is "a theory of the process and positions occupied by the subject in relation to language and ideology."⁸

Hirst, a one-time adherent to the Althusserian cause and subsequently a radical critic - though not of the questioning tradition which in his view Althusser has helped to create⁹ - has demonstrated that Althusser's original formulation of a theory of ideology does not fit such a bill because it treats the subject as constituted but without breaking from the traditional mode of thinking which assumes a correspondence between 'subjects' and human individuals.¹⁰

It is to the French psychoanalyst, Lacan, Althusser's original inspiration for the concept of interpellation, that some eyes have turned for the resolution of these theoretical problems. Detours through the structuralism and semiology of amongst others Ferdinand de Saussure, Roland Barthes and Christian Metz, have led eventually back to Lacan. Lacan's radical re-reading of Freud¹² is connected with the formation of the infant as subject in language through unconscious

processes. Theoretical and empirical work in the social and human sciences deriving from Lacan, particularly in the area of film theory and practice,¹³ has attempted to "account for how biological individuals become social subjects, AND for how those subjects are fixed in positions of knowledge in relation to language and representation, AND for how they are interpellated in specific ideological discourses." ¹⁴ However many advances over the original positions of Althusser such work has made, it is not necessarily satisfactory in itself. As Hall, a long-time critic of such trends within cultural studies, has argued, albeit in acknowledging its importance:

"It does not follow that a theory of how the 'subject-in-general' is formed offers, IN ITSELF, without further determinations, an adequate explanation of how historically specific subjects, already 'positioned' in language-in-general, function in relation to particular discourses or historically specific ideologies in definite social formations. The theory of 'the subject' as advanced . . . MAY BE a necessary part, but IT IS NOT YET A SUFFICIENT EXPLANATION OF particular discourses or specific ideologies and their functioning." ¹⁵

Furthermore, there are serious reservations about aspects of Lacanian theory. Firstly, it has been criticised as inevitably sexually discriminatory because it works with an assumption of eternal patriarchal relations. As one commentator has pointed out:

"Lacan's theory of the PHALLUS and its pivotal place in the formation of the ego, leaves him wide open to accusations of phallocentrism." ¹⁶

Despite debates between those who sought to use Lacan for a critical renewal of the social and human sciences about this question it is by no means easy to resolve this issue in favour of Lacanian psychoanalysis. ¹⁷ As Lacan himself has said:

"The fact that the penis is dominant in the shaping of the body-image is evidence . . . Though this may shock the sworn champions of the autonomy of female sexuality, such dominance is a fact and one moreover which cannot be put down to cultural influences alone." ¹⁸

Secondly, the only utilisation of Lacanian psychoanalysis, thus far, directly applied to legal discourse research is the analysis of judicial and official reasoning by Burton and Carlen. ¹⁹ Despite their attempts to get away from empiricist accounts of 'official discourse', the eventual explanation suffers from the most blatant problem of relying on a discourse - that is, psychoanalysis - which itself depends on the analyst/patient relationship of the clinic for its effect. The difficulties of analysing non-human subjectivities, such as state and corporate forms, with Lacan's theory of the three orders under-lying the relationships of human beings, - namely, the Symbolic, the Imaginary and the Real, ²⁰ - are only too evident in Burton and Carlen's work. Despite their disclaimer that:

". . . useful though Lacan's imagery has been to us, we were aware throughout of

the problem of implying that the state has an 'unconscious'. We do NOT assume that the state has an 'unconscious' (nor for that matter a phallus!) "21

it is precisely the extremely metaphorical use of Lacan's language in the analysis of official reports which bars the way to a satisfactory interrogation of the material under review and an adequate explanation of the modern creation and transformation of the legal subject. Consequently, often the result is mere description rather than rigorous analysis of legal discourse.

However, it is the question of historical specificity of the subject which theories utilising Lacanian psychoanalysis have failed to come to terms with. It may be based on unsatisfactory, patriarchal assumptions and prove less than adequate when applied directly to legal discourse (and in that sense may not even be a NECESSARY part of rigorous social scientific accounts of law) but, as Stuart Hall has pointed out, it is certainly not yet a sufficient explanation. Its major, overwhelming omission is the adequate account of the historical development of the subject in specific social formations:

"This approach clearly identifies a gap, not only in structuralism but in Marxism itself. The problem is that the manner in which this 'subject' of culture is conceptualised is of a trans-historical and 'universal' character: it addresses the subject-in-general, not historically-determinate social subjects, or socially determinate particular languages. Thus it is incapable, so far, of moving its in-general propositions to the level of concrete historical analysis."22

The debate about the search for an adequate theory of the subject has been heated and vigorous in recent years²³ and its effects have included the substantial shifting positions amongst the original participants.²⁴ The overall state of the argument still remains somewhat confused, however. In general, though, the search for a theory of the subject which goes beyond the false dichotomy of either economic agents or free agents, is, as John Caughie has argued, likely to comprise:

"an account of the determination and pressure which operate on individuals in terms of the places they come to occupy within the formations (social, textual, sexual, familial, discursive) which provide the sites of their activity. Such a theory is called for by the view that individuals are . . . formed as social, sexual, political subjects by a whole range of often contradictory discourses."²⁵

But this bald statement of position is not entirely without its difficulties either. Although satisfactory as it stands, it obscures several unresolved debates which have gone on behind the scenes, as it were. For the solution proposed by Caughie, and many other 'SCREEN theory' adherents, of the problem caused by the formalism of much semiology, is the combination of semiotics (a theory of the textual subject) with psychoanalysis (a theory of the sexual, divided subject) and Marxism (a theory of the social, political, historical and economic subject of exchange).²⁶ However, quite apart from the problems generated by the separate combinations of, as we have seen, psychoanalysis and Marxism, and, also

semiotics²⁷ and Marxism, the difficulties within historical materialism itself of accounting for the historical development of the subject have been immense.

The major competing explanations of the historical development of the subject have been the theory of the fetishism of commodities within historical materialism, and the accounts contained in the work of Michel Foucault. Karl Marx's comments on the fetishism of commodities in CAPITAL, Vol 1²⁸ have been the focus for radically different theories of alienation claimed by various schools of Marxism. The concept of 'fetishism' signifies, according to Diana Adlam et al:

"A characteristic of commodity producing modes of production, particularly the Capitalist Mode of Production. It is conceptualised through several oppositions, principally phenomenal form/real relations and appearance/essence which appear interchangeably . . . The terms of each dichotomy are described as related in inverse, irrational or imaginary ways. The phenomenal forms or appearances are such that THINGS seem to have an active nature, whilst underlying social relations appear as inert things . . . The crucial question posed by the theory of fetishism is precisely how capitalist societies necessarily appear to their agents as something other than they really are."²⁹

Whether Marx is interpreted here as arguing that capitalist social relations appear misleadingly to its subjects as

thing-like when they are in fact relations between human beings (as in the cruder versions of fetishism in Marxism and theories of reification in phenomenological sociology),³⁰ or that such social relations REALLY are like that in capitalist societies and that it is REALITY itself which is deceptive and illusory (as in the more sophisticated interpretations of fetishism),³¹ the 'discourse of fetishism' cannot be the foundation for a coherent theory of ideology because it involves the classical empiricist notion of knowledge.³² The best illustration of this is found in the work of the Marxist economist, Isaak Rubin, in the nineteen-twenties. Rubin asks:

What does Marx's theory of fetishism consist of, according to generally accepted views? It consists of Marx's having seen human relations underneath relations between things, revealing the illusion in human consciousness which originated in the commodity economy and which assigned to things characteristics which have their source in the process of production The theory of fetishism dispels from men's minds the illusion, the grandiose delusion brought about by the appearance of phenomena in the commodity economy, and by the acceptance of this appearance (the movement of things, of commodities and their market prices) as the essence of economic phenomena. However this interpretation, though generally accepted in Marxist literature, does not nearly exhaust the rich content of the theory of fetishism. Marx did not only show that

human relations were veiled by relations between things, but rather that in the commodity economy, social production relations inevitably took the form of things and could not be expressed except through things. The structure of the commodity economy causes things to play a particular and highly important social role and thus to acquire particular social properties. Marx discovered the objective economic bases which govern commodity fetishism. Illusion and error in men's minds transform reified economic categories into 'objective forms' (of thought) of production relations of a given, historically determined mode of production - commodity production."³³

Rubin, here, presents a sophisticated version of the theory of fetishism which distinguishes it from cruder interpretations and places it close to the arguments put forward by the Italian Marxist, Lucio Colletti, in the 1960's and 1970's. However, Rubin's theorisation of the REALITY of appearances, which he claims is the 'richness' of Marx's conception of fetishism of commodities, is still premised on a theory which presupposes a pre-constituted subject who can 'misrecognise' appearances, however real. No amount of stressing the real, as opposed to false, nature of these phenomenal forms of capitalist social relations will eliminate this fundamental problem. Rubin's interpretation of Marx is neatly summarised, without caricature, by his most trenchant modern critics, who argue that:

"The theory of fetishism is not concerned with ILLUSIONS generated in the experience of

subjects by capitalist social relations. Fetishism is not an appearance of things, a misleading illusion, it corresponds to real properties of their essence. . . . In a commodity economy relations between 'things' (commodities - the equalisation of things as proportions in exchange) is the form taken by relations between men - 'relations among PEOPLE acquire the form of equalisation among THINGS' . . . Connections between producers are established by the transfer and equalisation of their products . . . Men confront one another as economic subjects as possessors of things, as buyers and sellers."³⁴

For Hindess, Hirst, Hussain and Cutler such arguments are not convincing. They argue that the theory of fetishism which purports to account for the relations of these economic subjects is clearly recognised by Rubin to require "that observable forms of things be generated by reality itself and given to the experience of subjects."³⁵ However, critically for Rubin and others who wish to utilise the theory of fetishism for a general theory of social relations, Hindess et al maintain that:

"This position requires the subject/object structure of the empiricist process of knowledge: a subject with a given capacity for 'experience' who internalises what is given to it by the object."³⁶

We are back, almost, at the beginning, with the classical problem for which Althusser and others, despite their rigorous theoretical critiques, have no satisfactory answer. What

we are faced with once again, is the key problem of empiricism: that is, social theorists assuming the starting point of their theories as a constitutive (or transcendental) subject. In fact, it is clear that using the theory of fetishism as Rubin does:

" . . . supposes an essential subject, person/colletivities, who are potentially the unmediated authors of their acts. These essential or constitutive subjects are the origin of social relations and are unquestionable as origin. Persons are essential and irreducible, 'things' are secondary effects and must be recognised as the alienated products of persons."³⁷

Such an argument clearly has consequences for attempts to construct an adequate general theory of the state³⁸ or law based on Marx's theory of fetishism of commodities³⁹ which does not involve empiricist forms of explanation.⁴⁰ General theories of law and state in the Marxist mould are caught by this, and other, criticisms to such a degree that the only way to move forward - in a sense, beyond Marxism - theoretically is to analyse law as a specific discourse and a specific practice. In this thesis the retain and transfer system, and other regulations relating to professional footballers, are taken as just such specific objects.

The problem of avoiding the idealism of the theory of the fetishism of commodities in theorising legal relations and legal systems is not easily resolved. In contrast to the theories based on the view that legal form REFLECTS the commodity form, Bernard Edelman's theorisation of the legal subject,⁴¹ basing itself directly on Althusser's theory

of ideology as the interpellation of subjects, might have been expected to overcome such difficulties. However, this is not the case. Whilst Edelman shares with earlier Marxist theorists of law, especially Pashukanis,⁴² a focus on the commodity forms of the subject, his theory of the legal subject differs substantially from that of the earlier, Bolshevik jurist. Whereas for Pashukanis the legal subject is only a formal representation of the 'economic' subject - the subject of exchange relations of commodity society⁴³ - and consequently is not considered as a problem for analysis,⁴⁴ for Edelman the legal subject is specifically CONSTITUTED by law, literally constructed by the interpellation structure of particular legal systems and laws. In other words, "whereas for Pashukanis the theory of fetishism (the phenomenal forms in which the social process is experienced by the agents) amounts to a direct, if distorted, representation of the real, for Edelman the imaginary relation constructs the subjects and their experiences . . . Law is thus an active force in the constitution of subjects and not merely a formal recognition of subjects already constituted."⁴⁵ However the constitution of subjects through the ideological mechanism of interpellation has, as we have seen, been criticised as an inadequate explanation of ideology in general (even with considerable modification), and though Edelman's work has the merit of paying attention to the problem of the operation of interpellation in law, in creating specifically LEGAL SUBJECTS, the same criticism still applies.⁴⁶ Though, as Hirst notes, Edelman claims that:

"Subjects are not merely recognised but constituted in the form of law. Law is an imaginary representation of an aspect of men's relation to their conditions of

existence. It is in the law that men are constituted as subjects in the commodity form. Law interpellates individuals as possessive subjects . . ."⁴⁷

he does so dependent on Althusser's discredited theory of ideology. Also, more concretely, Edelman's analysis is predicated on French legal doctrine. In the analysis of the retain and transfer system and allied rules undertaken in this thesis it will be seen that English Law, as again Hirst has noted,⁴⁸ differs substantially from French Law in its treatment of legal subjects, making even more problematic the uncritical use of Edelman's general theory of law for the analysis of specific national legal systems.

In contrast to Marx's theory of the fetishism of commodities - and Althusserian attempts to resolve the problems inherent in its use - Michel Foucault's contribution to an understanding of the historical development of 'the subject', and in particular the legal subject, probes some of the more adequate routes to theoretical explanation of social forms, though it is by no means satisfactory or coherent in itself.⁴⁸ Foucault's pioneering study of 'the birth of the asylum', *MADNESS AND CIVILISATION*, gave rise to a number of subsequent contributions on the historical conditions of existence of the human sciences in general, culminating in the later analyses of power in modern 'disciplinary' societies and their modes of "formation of individualities",⁵⁰ namely the studies of the origin of disciplinarity⁵¹ and the question of sexuality.⁵² Foucault has concentrated on the conception of subjects in relation to 'discourse',⁵³ and has come, as John Fitz has argued, to an:

"understanding that discourses constitute subjects through the articulation of the

concepts deployed in them, and, position subjects (in terms of the presence or absence of subjects, the hierarchical ordering of subjects, etc.) in relationship to particular discourses."⁵⁴

Moreover in DISCIPLINE AND PUNISH and HISTORY OF SEXUALITY, his two most recent 'histories', he has put forward:

"a critique of the ideology of power as repression: an ideology whose dominance extends to the radical left."⁵⁵

For Foucault, Colin Gordon argues, power is:

"characteristically positive, productive and creative: a continued process of proliferating tactics and techniques, which functions in capitalist society by reinforcing both the relations and the forces of social production, manufacturing at the concrete physical level, docile, utilisable social individuals and at the 'ideological' level, constituting individuals as subjects. Foucault is to this extent in agreement with Althusser in regarding ASSUJETTISEMENT in capitalist societies as meaning not only subjection to, but also necessarily, subjectification. In this respect it would be true to say that Foucault has shown with greater correctness and historical specificity than anyone else how (and why) 'Substance' becomes 'Subject'. Moreover, if one can take Foucault's genealogical method as correctly positing that, in history, genesis is always also constitution, then his examination

of ASSUJETTISEMENT may provide us with some insights into the true stakes and dramatis personae of all past and present versions of the 'problem of the subject'.⁵⁶

Certainly, for some writers, Foucault has alighted on a more satisfactory route to the theory of the subject, and, according to Jean Marie Brohm, "sport is perhaps the social practice which best exemplifies the 'disciplinary society'"⁵⁷ which Foucault conceptualises in DISCIPLINE AND PUNISH. In a sense, then, it is not surprising that Foucault's influence on the present study is wide-ranging and pervasive. But Foucault's importance in the search for an adequate theory of subjectivity should not be overplayed, particularly in relation to subjects in law,⁵⁸ even though his approach has been significant in its emphasis on "the historical specificity of the positions occupied by subjects within particular discursive practices",⁵⁹ and, undoubtedly, the HISTORY of the development of subject positions in relation to discourse cannot be ignored.

HISTORIES OF LEGAL SUBJECTIVITY

It is the historical development of the professional footballer as legal subject that this thesis is concerned to investigate. But it does so in recognition of the fact that an adequate analysis of subjectivity must recognise that the subject should be conceived as to some extent already positioned in other "discursive formations and social relations".⁶⁰ Despite the danger of over-emphasising the law's effect,⁶¹ along with other discourses and relations, in constructing subject positions, this is not claimed to be the sole purpose of legal relations, merely a very important role in the social relations under analysis. The conception of the subject in social formations which is

advanced here has, it has been argued, to be "non-transcendent (it is not consciousness) and non-humanist (it is not the ego or the self)".⁶² The avoidance of such conceptions is on the grounds that they employ the experience-form of empiricism. The legal subjectivities considered here are "constituted by" and in "a definite position in relationship to separate and different discourses."⁶³ Various contradictory subjectivities are the product. Although it is not suggested that legal discourse is merely determined by 'deeper' social relations, there is nevertheless an inter-relationship between them.⁶⁴ Part of the task of this thesis has been to unravel the tangled web of such relations in the specific area of professional football.

To date, precious little academic work of note has been produced on the nature of legal regulation of 'subjects' in the football industry, either in Britain or elsewhere, especially from standpoints which have anything of an historical overview to commend them. There is firstly the narrow, legal positivism of barrister Edward Grayson,⁶⁵ which in any case ranges over 'sport and the law' in general rather than football and the law in particular. Secondly, there is George Keeton's book, *THE FOOTBALL REVOLUTION*,⁶⁶ which Ian Taylor pointed to, sarcastically, in the course of a book review of Hunter Davies' *THE GLORY GAME*, as one of a "crop of pop 'sociologies' of soccer"⁶⁷ which reflected the preoccupations (in 1972!) of:

"middlebrow, button-down-collar
intellectuals' of the Sunday press,
and academics from various disciplines
who can now write about their football
hang-up without loss of respectability."⁶⁸

Whatever else Keeton's text represents it is certainly not sociology (however 'pop') and its approach to the history

of legal change in the football industry can be regarded as empiricist and misleading in the extreme. One of Keeton's errors is to reproduce the standard histories of the game in relation to changes in the legal status of players, clubs and administrative bodies. His argument amounts to claiming that just as, in his view, there was a transformation of players' legal and social positions from illegal outlaws to legal, respectable professionals in the later part of the nineteenth century, the changes in the early 1960's which took place as a result of the abolition of the maximum wage and a high court declaration on the retain and transfer system constituted a 'revolution'. Hence, the title of his book. As already noted, this thesis questions the conceptual structure, which can be summarised by the formula 'illegality - legality - freedom', representing a three stage historical evolution of the professional footballer: unfortunately for Keeton, it is a fictitious view of the social history of legal change in the football industry.

What is it about these 'histories' - legal, social, popular and so on - which remain problematic for accounting for the development of legal subjectivity? Certainly they rely on a conception of subjectivity, though rarely positively recognised, which is close to that of the idealist perspective which has already been criticised earlier in this chapter. The subject is assumed to correspond to the human individual which is in turn assumed to be pre-given, constituted prior to any social activity. As Foucault has rightly argued:

"One has to dispense with the constituent subject, to get rid of the subject itself, that's to say, to attain an analysis which can account for the constitution of the subject within the historical texture."⁶⁹

It is this methodological scepticism of Foucault's, despite the various difficulties of applying it historically⁷⁰, which is necessary in order to avoid falling into the all-too-common trap of evolutionary, teleological accounts of human or social progress. This is particularly the case with 'popular' general histories of football.⁷¹ Morris Marples, for example, in his oft-quoted history of football explicitly maps Darwinian conceptions onto the history of football up to the 1950's. "Clearly", he notes, "the professional footballer is an outstanding example of survival of the fittest".⁷² Whether such histories fall into what we might call the 'romantic' camp, stressing the working class or 'popular'⁷³ elements in the origins of modern (ie. professional) football, or into the more hard-nosed, 'realist', anti-nostalgic,⁷⁴ empiricist mould⁷⁵, there is a sense in which the history of the football industry simply unfolds, in a linear direction, towards the present. This history seems to me to make assumptions about the social relations of football which are unwarranted, but nevertheless significantly contributes to our sense of what football means as a contemporary mass spectator sport.

Some accounts to date have attempted to impose more adequate theoretical frameworks on the history of football. Elements of the somewhat riotous⁷⁶ nature of the early history of modern football have been addressed from within different academic disciplines - for example, sociology,⁷⁷ social history⁷⁸ and geography⁷⁹ - but they have not managed to escape entirely from the foregoing criticism of teleological histories and have even in some cases created further difficulties by their epousal of a functionalism, whether of 'left' or 'right-wing' varieties,⁸⁰ which disables their analyses to some extent.

It has been suggested more recently, however, that investigations in oral history and popular memory⁸¹ might

overcome some of the difficulties we have pointed to. Although this thesis is not orientated towards oral history as such in its methodology, it takes into account the importance of social constructions of popular memory: that is, of particular periods of 'the past' as years of social transformation. The academic and popular 'histories' of the footballer as legal subject are, it will be argued, part of the constellation of practices which create popular memory of the professional footballer and indeed the sport in general. It is with this in mind that there is not necessarily a chronological progression in the pages which follow. This thesis investigates methods of construction of the history of the footballer as legal subject rather than relying on merely 'factual' material which would form part of a narrative, descriptive history of the footballer from the late nineteenth century to the present day.

In particular the social construction of the early 1960's as a period of massive social transformation in the football industry - it is, we have to remember, the period of the abolition of the maximum wage and the 'end' of the old retain and transfer system - will be documented. In order to do this the discourses which first constituted the professional footballer as a legal subject in the late nineteenth century (and their 'conditions of existence') will be investigated and their connections with, and effects on, twentieth century social relations (around football especially) laid out in the Chapters which follow. First we must turn to the 'birth' of the footballer as legal subject in the nineteenth century.

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CHAPTER 2: FROM ILLEGALITY TO LEGALITY

"Professionalism did however have unpleasant side effects for henceforth footballers became marketable commodities to be bought, sold, haggled over and inspected like eighteenth century slaves. They were even offered for sale."¹

The historical 'period' in effect covered by this Chapter is that between the emergence of the Football Association in 1863 and the outbreak of World War I in 1914. The major events as far as the regulation of professional football was concerned were: the act of legislation which formally permitted professionalism in soccer; the formation and development of professional football clubs as limited liability companies; and the origin of restrictive contracts for professional players and the introduction of the maximum wage restriction. Furthermore, the period witnessed the formation of not only the F.A. but also the Football League and Players' Union which as Tables 1 - 3 indicate have remained to this day as the 'tripartite' structure of the industry with relatively few changes in personnel, allowing for the construction of a number of highly personal relationships² between the officers of the respective bodies.

THE LEGALISATION OF PROFESSIONALISM

Formally, the 'legalisation'³ of the professional footballer in England occurred in 1885.⁴ As Geoffrey Green records it in his chronological history of the game:

"After a long struggle, many proposals, and a strong opposition from the Sheffield and Birmingham areas the legality was at last agreed and passed on a resolution proposed

by Dr. Morley of Blackburn and seconded by R.E. Lythgoe, of the Liverpool Association. The special general meeting where this historic step was taken was held at Anderton's Hotel, Fleet Street, London on July 20, 1885. The voting was 35 to 15 in favour, the necessary two-thirds majority being gained at last after many failures."⁵

Professionalism in English football was thus duly legalised. However, it was not necessarily all that it seemed at first sight. The apparently momentous decision was made by the Football Association in a peculiar economic and social context. As Percy Young notes⁶ in his popular history of British football, much of the initial impetus for professionalism to be recognised came from clubs who were 'importing' Irish, Welsh and, particularly, Scottish players. There is, Young claims, a plausible economic explanation of such immigration of soccer talent into England:

"During the 1870's a serious decline in agricultural prosperity coincided with an industrial boom. The manufacturing industries of the North and the Midlands needed every man on whom hands could be laid. Expansion of communications also meant vacancies for labourers on the railways and in the docks. Such conditions encourage immigration. The Irish, the Welsh and the Scots poured into England. Enterprising football clubs saw in what way this form of brain-drain could be turned to their advantage."⁷

It was indeed the decade of the 1870's which first saw players being paid to perform on the football field. These footballers were the pioneers of professionalism since

their presence as paid members of supposedly amateur teams was against the spirit of the constitution of the F.A. since its formation in 1863. The best known of these early professional footballers, and probably the first, were two Scots, James Love and Fergus Suter who played at Darwen and their fellow countrymen Peter Andrew and James Lang in Sheffield. As Tony Mason notes:

"It is difficult to be exact about when football players were first paid for playing. As early as 1876 Peter Andrews and James J. Lang had left Scotland to play for the Heeley club in Sheffield, but although they were often said to have been the first professionals no satisfactory evidence has ever been uncovered. In the spring of 1879 Darwen played a match with Turton 'for the benefit of two Scotch gentlemen who have played with Darwen during the past season'. The two gentlemen were Love and Suter. There is not much doubt that Suter was paid for playing and Love was probably given a consideration. Even before that, Suter had played for Turton . . . in 1878 . . . A few weeks earlier, following a defeat by Blackburn Rovers, the Darwen paper had commented that the Rovers had been 'well marshalled by McIntyre, who, we believe is engaged as professional to the Rovers'. McIntyre was an upholsterer by trade who had allegedly left Glasgow . . . to look for a job in Lancashire."⁸

By 1882 Suter was playing for Blackburn Rovers in the F.A. Cup Final versus the Old Etonians,⁹ and in that year the

Football Association Committee formally outlawed professionalism by passing a rule banning paid players, which eventually led to one of the first modern football clubs, Accrington Stanley (see Table 5) being expelled in November 1883.¹⁰

As Dunning and Sheard note:

"It was also in 1882 that the FA enacted legislation forbidding payment to players in excess of bona fide expenses and wages lost but it was difficult to enforce and 'illegal' payments continued. A series of sub-committees were, therefore, set up to see if more stringent controls could be devised. A decisive moment came on 19 January 1884, when Preston drew with Upton Park in the fourth round of the Cup. Upton Park lodged a protest, alleging that Preston employed professionals. Such allegations had been made previously but had always been denied and were difficult to prove. Now, for the first time, Major Sudell of Preston openly admitted that his players were paid, claiming that it had become common in the North, essential for any club that wished to succeed. As a result of Sudell's honesty, Preston were disqualified from the Cup for that season and the FA enacted stricter legislation for the control of professionalism and the related practice of 'importing' players . . . "

11

Just how common it had become amongst Northern clubs to pay

at least some of their players as professionals in the early-mid 1880's is clear from Table 4. Blackburn Rovers, Bolton, Burnley, Derby as well as Preston North End, Darwen and Accrington Stanley are shown, at any rate by official sources, to have turned professional before formal legalisation in 1885 and there were probably others. Undoubtedly, the occasion of the flood of 'foreign' players was the desire of such Northern clubs to win the F.A. Cup instituted in 1871.¹² Darwen for instance were described by one modern journalist as the "humble little . . . side of artisans who challenged the mighty Old Etonians"¹³ at the Oval in 1879 and against overwhelming odds - social and sporting - narrowly failed to perform the first 'giant-killing'¹⁴ act in their historic attempt to win the coveted trophy. Several of the other above-mentioned names also figured prominently in the early history of the F.A. Cup.¹⁵ However, this was scarcely the cause of the recognition, in law, of professionalism. Percy Young has argued convincingly that wider social and political conditions of English society in the 1880's provided a highly specific context for legalisation:

"The fight for the recognition of the professional footballer was part of a larger fight; behind it lay the activities of the increasingly important Trades Union organisations, and political manifestations such as those of the Parliamentary Committee of the Trades Union Congress, the Labour Representative League, and the developing philosophy of Liberal Socialism."¹⁶

Certainly, the legalisation of professionalism in the mid-1880's may not have been possible without the prevalence of

these, and other, 'external' factors. Yet behind and beyond the seemingly straightforward act of legalisation in 1885 lurks an even more relevant ideological struggle.

The legalisation of professionalism may have been almost inevitable and the "legalisation of a situation that was not to be altered"¹⁷ but its coming conceals the fierceness of the conflict over the development of professionalism in team sports.¹⁸ In the specific case of professional football this was a complex matter: as Mason¹⁹ has shown, it was not a simple feud of amateurs versus professionals. Factions within the F.A. divided on the question of whether professionalism should in fact be legalised - hence the contrast between the years 1882 to 1884 when strenuous efforts were made to outlaw payments for 'lost time' and other forms of professionalism and the eventual legislation in its favour only half-way through 1885.²⁰ Some of those who supported professionalism were very clear about the extra control legalisation would bring to the Football Association and to the individual football clubs. Thus the romanticised picture of the establishment body capitulating to the militancy of certain social and political forces within and around football when the going got rough will simply not suffice. As Young points out, the F.A. Council of the 1880's was composed of honourable men, but often they were men of prejudice seeing themselves "as patricians, heirs to the doctrine of 'leadership' and so law-givers by at least semi-divine right."²¹ The social and political pressures which had brought matters to a head, though undoubtedly difficult to resist, by no means assured an outright victory for the forces of change against the conservatism of the F.A. Indeed, the Association cannot, in any satisfactory sense be seen as the loser in the battle for professional status. Rather, in spite of the internal debates about the 'evils' of professionalism, and to some

extent because of them and the strong resistance of the hard-line amateurs, the controlling body of the game of association football acquired a new and more lasting hegemony. As Percy Young has pointed out:

"The legalisation of a situation that in any case was not to be altered represented a victory for common sense and was a reflection of ideas that had begun to bear fruit elsewhere as a result of the Reform Acts of 1884 and 1885, and Joseph Chamberlain's 'New Radicalism'. At the same time it placed the English F.A. in an unassailable position. That is to say, the Committee assumed powers of ultimate control over the conditions of employment of a body of men that was increasing year by year. The professional footballer was dependent on the committee of a club - usually controlled by a local worthy with funds at his disposal - for employment. Without any security other than that afforded by the preservation of both skills and health and conditioned to an acceptance of social inferiority, he was placed in a state of subordination. Since he was also subject to a control by a local Association as well as by the F.A. a deep sense of inferiority was built into his calling."²²

The professional footballer in England, then, even at the very moment of his initial recognition in law, his constitution as a legal subject with rights and duties, was

to be made patently aware of his place; his station in life. He was conceived awkwardly between a social movement from 'below' and a patrician control from 'above' which still, despite recognising the legitimacy of the professional player, continued to look backwards to the idea of bringing all social classes together on terms of 'market equality' in the old amateur tradition.

One argument against professionalism which was advanced in the 1880's was undoubtedly based on such a lament for earlier times when professionals did not spoil 'perfect competition'.²³ However, in fact there were a number of reasons recited in the journalism of the late nineteenth century and early twentieth century²⁴, often with an extraordinary venom and frequently reminiscent of contemporary journalism. One such attack on professionalism appeared in the QUARTERLY REVIEW in 1909²⁵: it begins with a diatribe on the degeneration of the (English) race and ends with the relection that "unrestrained, unabashed, unrebuked, the spirit of professionalism has insidiously permeated the atmosphere of Oxford and Cambridge, of Eton and Harrow".²⁶ For this anonymous author "the love of gate-money is the root of evil in athleticism"²⁷, a thought echoing an earlier piece in THE CONTEMPORARY REVIEW²⁸ nine years earlier by H. Graves, where he claimed that the influence of gate-money "has completely altered the aspect of many forms of sport".²⁹ For such writers it was the corrupting influence of professionalism on both player and spectator which riled them so deeply:

"The effects upon the players themselves is bad enough. Like members of modern parliaments they are tempted to play to the gallery, not to the gallery represented by the actual spectators, but to that larger and still less

discriminating crowd which follows 'sport' indolently and vicariously in the columns of the daily papers. The effect upon the public is worse. The majority of young men with any aptitude for healthy games, frightened by the grotesque criterion of excellence set up for them by the descriptive reporter, refrain from any attempt to take an active part in such competitions, but by the aid of their gate-money pay others to play for them and make a match an excuse for loafing up to ground, sitting or dawdling away an afternoon, and 'backing their fancy' - most appropriate of phrases - with no regard for the merits of the game and with no real advantage moral or physical to themselves."³⁰

Graves, in particular, highlights the mediation in all this of the factor of organised betting:

"Ideally sport is confined to gentlemen: in real life it is also followed by hucksters who pervert it to the use of making a livelihood, removing it, as I have said before, from the realm of recreation, and importing into it the mercilessness and sordidness of the everyday struggle for bread . . . This conclusion is fortified by the fact that of all other sports those only are remarkable for the rough and undisciplined character of the crowds which they collect in which organised betting is a prominent

feature. Professional pedestrianism and football, especially in the North of England, are cases in point."³¹

Professionalism, particularly in soccer, was thus clearly an object of scorn, and even fear, at least on the part of late Victorian and Edwardian middle class writers in certain periodicals. The sort of behaviour by players which so exercised the pens of the literary-minded defenders of amateurism in this period is described by a Bolton sports journalist in the following extract about the exploits of the footballers of Great Lever, a Lancashire side who themselves were suspended in the F.A. purge on professionalism in 1884.³² In its second issue in September of that same year, the FOOTBALL FIELD AND SPORTS TELEGRAM published this comment:

"The Great Lever Executive had been careful to fix their match for 3.45 allowing the Reds plenty of time to struggle from Accrington by the slowest of slow train services, but this wasn't late enough. The long ride from Accrington to Blackburn apparently exhausted four of them who got out to refresh. I wouldn't suggest that the Blackburn ale is too potent for Accrington heads, but anyhow having 'liquored up' the quartette (sic) couldn't see the train. A libellous friend opined that they saw so many trains they didn't know which to choose, but I reject his opinion with scorn. Seven of the men arrived to time, and were kicking their heels about for an hour, and the bibulous boys having

landed hostilities were commenced a little before five. Very 'rough on rats' for the spectators, and it musn't occur again".³³

The legalisation of professionalism in the following year didn't seem to significantly divest the game of such unruly and unregulated participants! On the field in the 1880's and 1890's behaviour was frequently rowdy and no doubt amateurs would have been horrified to read in the press of incidents such as Oswald of Notts County missing for a month in the 1892 season because he was "serving time" and Smont of Burnley being sentenced to a month's imprisonment for throwing a stone at Griffiths of Wolves on March 20th, 1897.³⁴ Off the field, the spectators of the period were, as Mason, Hutchinson,³⁵ Dunning,³⁶ and Vamplew³⁷ have recently documented, once again to middle class chagrin, frequently guilty of 'ungentlemanly conduct' which included crowd invasions of pitches and public disorder involving assaults on property and persons. As Geoff Pearson has argued, such 'respectable' fears have focussed on the "traditional mass entertainment of working class men and boys-football"³⁸ in the late twentieth century as well as in the late nineteenth century, but in the 1880's and 1890's it was professionalism as such which could be identified as the main target of attack. The fears of the disease of professionalism went further, too, than anticipation of physical contact with working class violence. The game's 'purity' was at stake: as another commentator of the period put it, the "game should be played for its own sake and for no other reason whatever."³⁹ The same author made it crystal clear that:

"Not the most ardent of democrats
can admire the effect of the people

upon Association football. Those pampered members of society, the British lower classes, can apparently only regard any form of sport as it assists them to make money. It was an ill day for the game when the northern labourer diverted his attention from quoits and rabbit coursing and pigeon flying, and turned it to football."⁴⁰

Such crass class prejudice from one of the well-known amateur figures and journalists of the era⁴¹ stands as a testament to the strong resistance to professionalism in the upper echelons of the game in the late nineteenth century and echoes some of the more generalised middle class fears⁴² in a period which saw mounting class tension in all walks of life. Further support for such views was plentiful. Hely Hutchinson Almond wrote in 1893 that:

Professional football is certainly bad for the player. He can follow no trade when engaged in it, and he cannot play the game for more than a few years, at the end of which time he is stranded without an occupation, and too often after having contracted habits and ideas which are sufficient of themselves to prevent his making an honest livelihood of any kind "⁴³,

and in a vitriolic assault on professionalism in soccer and on 'popular culture' in general, Ernest Ensor contrasted the hard working professional cricketer with the loathsome footballer:

"Compared with these men the professional footballer is an idler. He plays as a

rule, for an hour and a half on two afternoons in the week, and he should train for a few minutes each day; all the rest of the week is his own. The system would not work so badly if the men worked at a trade, as they might well do; but the temptation to idle is too strong. The class from which they are drawn is one that neither looks before nor after, and, if they know, they cannot realise that their career will be short . . . After all the adulation, after a man has heard his name flying over the lips of man, after he has lived on the best for nothing, how is he to set himself sternly to work and earn a hard-won living as a fitter or a labourer . . . The worst feature of professional football is its sordid nature."⁴⁴

In all of this middle class moralising, then, there are a host of reasons for anti-professional feeling. However, they are part of a discursive conflict which to some extent had resolved itself by the turn of the century. This did not mean that arguments about the deterioration in the physical and moral fibre of the nation, and in particular the 'working classes', being attributable to professionalism in sport, and especially football, did not continue,⁴⁵ but as John Hutchinson points out in a well chosen phrase, professional footballers "became slowly less disreputable in the eyes of many of the extreme amateur players and administrators, and the game itself became increasingly respectable in the eyes of society in general".⁴⁶ Writers on the 'new football mania' in the 1890's were occasionally

astute enough to forecast such a trend⁴⁷ and no lesser person than the former Secretary of the Football Association (see Table 3.2) C.W. Alcock could write in 1907 that:

"No one can overlook the fact that some generally well informed critics point to the football professional as a quite inferior person . . . This is, of course, sheer nonsense."⁴⁸

This is a far cry from W.H. Joze of the Birmingham Association saying at the Fleet Street meeting in 1885 that it was degrading for respectable men to play with professionals.⁴⁹ Professionals had moved in a few short years from illegal, outlawed but indispensable 'devils' to officially recognised constituent parts of a major mass spectator sport. What allowed for this discursive change, from footballers conceived as outlaws to footballers as 'cultural commodities'? What rules and regulations were made in the 1880's and 1890's in order for such a transformation to take place?

THE INTRODUCTION OF RESTRICTIVE CONTRACTS FOR PROFESSIONAL FOOTBALLERS

Legalisation of the professional footballer, in the sense of constituting him as a full legal subject, far from being completed in 1885, had only just begun. In fact, the birth of the professional footballer as a legal subject was in some senses abortive. As Green notes, the professionalism which was legalised was still "under certain stringent conditions",⁵⁰ though "it was professionalism none the less".⁵¹ What was the nature of this stringent control at the very moment of 'legality' for the professional player in England? The Football Association rules introduced at the legalisation meeting in 1885 bound the players

by "birth and residence qualification, and denied easy movement from one club to another."⁵² On the question of the first two issues, the Football Association soon relented and in May 1889 "the last of all those stringent conditions of birth and residence were swept away."⁵³ The movement of players from club of club raised more complex and long-lasting issues however. The F.A. rules passed in 1885 laid down that "all professionals shall be annually registered in the books of the Committee of the Football Association, and no professional shall be allowed to play until he has been so registered."⁵⁴ No professional was to be permitted to play "for more than one club in any one season, without permission of the Committee of the Football Association."⁵⁵ Here then at this early stage in the life history of the modern professional footballer is the contradictory position: a legal subject which is 'free' and yet 'unfree'. Formally after the 1889 reforms there was unrestricted movement of professional players in England. In practice the country was witnessing the birth of the infamous transfer system, whereby employees on the playing staff of a club are bought and sold. J.R. Witty, in his discussion of the transfer system,⁵⁶ points out that it is technically the registration that is transferred - an argument which is echoed today by the football clubs themselves when called on to defend the transfer system. This is clearly indicated in the original rules of the Football League, the body which, in 1888, constituted itself in the wake of the legalisation of professionalism. These rules, adopted by member clubs in 1888, emphasised that:

"Any BONA FIDE member of a club shall be allowed to play providing he has not taken part in a league match for another club the same season. If he has so played,

permission for his transfer must first
be obtained from the management committee."⁵⁷

This was in fact, not the first restrictive clause in professional team sports contracts since the 'reserve system' had already been introduced across the Atlantic in American baseball in 1880.⁵⁸ However, it was to be long-lasting and a major shackle on the professional footballer. It was effectively a restraint of trade provision, preventing players from acting as (theoretically) other employees could by selling their labour power to the employer of their 'choice'. From virtually the 'moment' of legalisation, the restriction on players' rights to move from employer to employer - the system of 'retain and transfer' as it came to be known - was a cornerstone of the industrial relations of professional football: it was there, almost, from the beginning of professionalism. Within eighteen months of its formation the Football League decided to react to the poaching of players by other clubs from their present employers.⁵⁹ The League, however, condoned illegal payments of a signing-on fee EVERY time a players signed for a club⁶⁰ and individual member clubs were not easily controlled by the Football League - for instance, when in 1893-4 the Football League Management Committee proposed that it should decide the amount of a transfer fee the clubs failed to conform.⁶¹ Moreover, the retain and transfer system was a source of conflict between the two controlling bodies, the Football Association and the Football League. Whilst the F.A. argued that a professional was only tied until the end of the season, the League claimed the right to retain a player, and consequently rights to a transfer fee.⁶² The League decided in 1894, overwhelmed by the increase of poaching of players, to grant its member clubs the right to retain their registered players. Henceforth, the principle

of retaining the registration of players has been justified by claims that it protected the poorer clubs from poaching by the rich. The transfer fee was justified as an 'equivalent' for something lost which could be used to purchase a replacement commodity. In March 1899 the F.A. arranged a conference, suggesting modification of the transfer system. The League responded by interpreting the suggestion as a threat to curtail the transfer system and managed to force the F.A. into legalising transfer fees. In 1904 the Association relinquished ultimate control of such matters.⁶³ However, any attempt to legally control the transfer system from above was vigorously resisted by the League clubs themselves. In January, 1908 the Football Association put a limit of £350 on transfer fees but:

"within three months - April - the limit was withdrawn. This attempt to control a transfer system which the F.A. had never liked from the beginning was the direct outcome of the sensational fee of £1,000 paid in 1905 by Middlesbrough to Sunderland for the transfer of (Alf) Common. But no sooner was the restricting rule brought into force than it was realised to be a hollow sham. The clubs had already found ways of circumventing it by under-the-counter methods."⁶⁴

Such a system of retain and transfer has figured constantly in discourses about football, and for that matter other professional team sports such as baseball, ice hockey, cricket and so on, in the same way that slavery has appeared in the various histories of black peoples throughout the world. Ex-professional player, Billy Bremner, claimed in the 1970's that:

"To a certain extent, football is still like white slavery."⁶⁵

Undoubtedly elements of the footballer's contract of employment, right up to the present day echo the legal form of slavery characteristic of slave systems of the past. In a sense the footballer's position is, as Hindess and Hirst describe 'chattel slavery', one of "legally-sanctioned unfreedom".⁶⁶ In chattel slavery, according to them:

"In recognising the slave as a chattel the law defines the essence of the slave's condition: whatever the variation of custom and practice which may grant the slave a larger measure of freedom, the law still makes it possible that the slave may be sold, punished or abused in contradiction of these customs and practices."⁶⁷

Substitute "footballer" for the word "slave" in this quotation and we have the essence of Bremner and others' argument. However, for footballers, 'slavery' came in at the moment of initial legalisation: the point of 'emancipation' as it were. Unlike the slave, who was a "human subject and a legal non-subject"⁶⁸, footballers' legal status is more one of being recognised as a legal 'person' without all the rights and attributes of legal subjects generally. Women and children for example have at various times suffered similar conditions of such 'legally-sanctioned unfreedom'.

Certainly footballers' legalisation did not significantly alter the perceptions of commentators who were against professionalism. Ernest Ensor, for instance, in the course of his diatribe against professional football and popular culture argued that players:

" . . . learn improvident habits, become vastly conceited, whilst failing to see that they are treated like chattels, and cannot help but be brutalised."⁶⁴

The main means of converting footballers into "chattels" of course was the transfer system which Ensor condemned in typically forthright manner:

"A whole machinery of law has evolved to deal with claims and prices, transfers and prior rights, until, ridiculous as it seems, the advertisements in a leading athletic weekly remind one of those once published by Southern newspapers in the American slave states. A first-class team is now recruited by means that savour of bribery and corruption. The club agent goes to a small town where a good player is known to reside, and tries by offers of a big bonus, and big wages to seduce him from his present club. If the good folk of that town or village hear of his attempt, that honest agent runs for his life, and puts many miles away. Scotch people have been known to take the strongest measures with strangers trying to seduce Sandy or Jock to the land of promise in the South. Stringent legislation has been found necessary by the chief clubs to protect themselves from one another. A professional is registered for one League club, and one only. If the club wishes to part with him, he is sold to the highest bidder, the club receiving what is delicately called 'transfer money' ".⁷⁰

Further, the anonymous author who contributed "Sport and Decadence" to the QUARTERLY REVIEW in 1909, had no doubt that:

" . . . there is a regular market, and, a recognised tariff for the sale and purchase of 'cracks',⁷¹ for all the world as if they were the human chattels we flattered ourselves we had done with when we paid millions for the abolition of slavery."⁷²

Thus the professional player was a subordinated hireling, and no gentleman would deny the inferior status of such a being, though the amateur interest groups, including factions in the Football Association, would fight to abolish the 'slavery' in football as they had fought to abolish slavery throughout the Empire. However, ex-Secretary Alcock in his retirement denied the popular view of the footballer "as a kind of serf",⁷³ and there were commentators like Charles Edwardes ready to recognise that players, although "marketable goods", were not "ashamed of it".⁷⁴ Moreover, one of the reasons for such lack of "shame" was indeed the power of at least some players in the late nineteenth century to earn considerably more in wages as a footballer than at any other available occupation.

THE INTRODUCTION OF THE MAXIMUM WAGE FOR PROFESSIONAL FOOTBALLERS IN ENGLAND

Restrictions on wages in the contract of employment of professional footballers have long been contentious. As Dougan and Young put it in the 1970's:

"The main subject for debate among players at the end of the last century was wages, and argument about the justice, or injustice,

of imposing wage restraint through maximum wage legislation went on for a long time."⁷⁵

Indeed it went on at least until 1961 when the maximum wage for footballers was abolished. Legal restrictions on wages were a persistent source of conflict in the football industry right up to the nineteen-sixties. Once illegal payments to players prior to 1885 became formal terms of the legal contract between club and player the critical issue was always 'how much?'. The same question was of course echoing throughout all labour relations, not only in football. As Dougan and Young suggest:

"As soon as professionalism was legalised . . . it was inevitable that there should be calls for the protection of players' interests, if only because of movements towards greater security among the working class from which all professionals came."⁷⁶

Over the years, until 1961, there were constant efforts by football's controlling bodies to limit the wages of professionals. For instance, in 1893 "the Football League tried, but failed, to establish a maximum wage of £140 per annum."⁷⁷ There were also at this time considerable conflicts over responsibility for wages, involving the two organs of authority in the industry, the Football Association and the Football League. Green states that in 1901 "the F.A. passed a ruling that clubs should not pay a player more than £10⁷⁸ for signing professional forms" and that "the maximum wage should be £4 a week or £208 a year, and the payment of bonuses on the result of a match should not be allowed."⁷⁹ Enforcement of such rulings in these years, however, was easier said than done,⁸⁰ and the arguments continued as to which body possessed control over such delicate matters and eventually in 1904 "the F.A. tired of these squabbles and agreed to free itself of all . . .

responsibility"; so from then on "the power to control financial agreements between clubs and players has remained vested in the Football League."⁸¹ Not that the Football Association was to stand idly by: on the contrary, it has frequently intervened. Nevertheless, it is clear that it is the League which for most of the twentieth century has been the 'master' in respect of restriction on wage payments, though of course the F.A. has remained responsible to this day for fees for representative and international matches.⁸²

The maximum wage restriction has always been an oddity, to some extent. As Martin Tyler has argued, amongst the restrictions on the professional footballer:

"The strangest was to be the maximum wage, invariably set far below the better players 'market value' and leading to massive abuse of Football League regulations before its disappearance in 1961. Interestingly other Leagues, such as the Southern and Scottish, paid little attention to restricting earnings, which led to situations such as John Charles finding himself being offered twice as much to play for Barry Town as Leeds United. The persistence of the maximum wage through to the second half of the twentieth century does, however, show the remarkable durability of the ethics of those who established the game, detrimental to its health though they occasionally were."⁸³

Perhaps one of the reasons why the maximum wage was so durable was indeed the "ethics" of those amateurs who had so hated the emergence of the professional footballer, especially in the 1880's and 1890's. The institution of

the maximum wage coincided, rather conveniently, with the professional footballer's achievement of a certain respectability and wider social recognition. As Hutchinson notes:

"By . . . 1905 the professional footballer had become a respectable, smartly dressed and quite well-off member of society . . . their numbers grew, so that when professionals were legalised in England in 1885 and Scotland in 1893 . . . most of the bigger league teams at least were made up almost entirely of professional players. Their wages grew too. In 1888, even the wealthiest of clubs like Bolton Wanderers were said to be paying its players an average of only 80/- per week. Celtic was paying its 'amateurs' the same that year! By the mid 1890's this had risen to about £3 plus a variety of bonuses for wins, draws and cup matches and Christmas tours.

Though payments varied tremendously between clubs and indeed between different players within clubs, it would seem that, in general, the average professional player by 1900 was earning, when all was included, about twice the wage of the average skilled worker at the time. Some invested their earnings and became businessmen. Others had businesses bought for them as a transfer incentive or when they retired . . . Many played as professional players but continued to follow their original trade."⁸⁴

Exactly how professional footballers' wages compared, in these years, to other sectors of employment is a matter of

some controversy but Hutchinson's seems to be a fair summary. Tony Mason in by far the most detailed social historical account of the player's life-style before the First World War,⁸⁵ stresses the widespread nature of part-time professionalism⁸⁶ prior to 1914, and the fact that the maximum wage, when it was eventually brought in, was not necessarily always paid⁸⁷ to all players. However, Mason's view, like Hutchinson's is that footballers' wages compared "pretty favourably"⁸⁸ with those of industrial workers, and continued to do so even after the introduction of the maximum wage in the 1901-2 season. Moreover, "hope of glory, status, a more flexible workfoutline, a more generally attractive life"⁸⁹ must also have been important considerations for the potential professional despite the clear lack of job security attached to the game.

That "lower-class players" could achieve the status of "highly-paid athletes" towards the end of the nineteenth century, and - worse! - that a man could "fix his own price" undoubtedly angered a large section of amateur interests.⁹⁰ The players were seen as "mercenaries" especially if they were Scottish and earned "big salaries" and there are cynical references in the journalism of the period to, for example, "professionals' bread and butter - or shall we say their grouse and claret?".⁹¹ Warnings, so familiar in the 1980's, were commonly given that the men "who, towards the end of the (eighteen) eighties, headed the movement and fought the first battles for professionalism never realised how far the system would go,"⁹² and players' wages were frequently cited as the cause of more than merely moral bankruptcy. In 1894 N.L. Jackson wrote:

"There are rumours of much bankruptcy in the air and lately we read in a football paper of a club that had to part with its players very cheaply . . . The professional

is an expensive luxury . . . A high authority upon football finance, in lamenting the heavy expenditure of clubs, gives the average wage of a professional player as £3 per week in the winter, and £2 per week in the summer. Four years ago a club paid during the summer £75 in retaining fees. The summer wages of the same club are now no less than £550. This, it should be remarked, is the remuneration of professionals during the months when the game is not being played at all."⁹³

Employers may well also have been seen to be to blame for showing the "players that the art of earning pay is the matter chiefly to be regarded" and engaging "their players as one buys stocks and shares"⁹⁴, but it was the professional player who was invariably the scapegoat even in the 1900's.⁹⁵ Indeed, for the player the road ahead was to be littered with restrictions: on wages, on conditions of employment, on movement from employer to employer. The professional player had begun his juridic life as he was meant to go on.

THE RISE OF THE LIMITED LIABILITY COMPANY IN THE FOOTBALL INDUSTRY

In fact, the players as employees have constantly had to respond, since the emergence of the Football Association in 1863, to the control and regulation of their lives by the private association, be it club, F.A. or Football League. Not only are professional football clubs who are members of the Football League all limited liability companies, but the controlling bodies are also incorporated in the

same legal form. The F.A. became a limited company in 1903⁹⁶ and the League followed suit the following year.⁹⁷ Both organisations have remained relatively stable, with, especially, the secretarial posts (like that of the Players' Union) providing astonishingly secure employment for their incumbents (see Tables 2.1 and 2.2 for the League, and Table 3.1 and 3.2 for the F.A.). Historically, it has been the Football Association and the Football League, the two limited liability companies, formally non-profit making,⁹⁸ which have in an arbitrary fashion, governed the industry up to the present day.

However, it is not sufficient to indicate the power of the controlling bodies alone. The place of the individual professional football club in the structure of the football industry is extremely important, especially when the practicalities of the Football League Management Committee 'forcing' its decisions on the 92 member clubs of the Football League are taken into account.⁹⁹

Clearly, the development of the individual professional football club is bound up with the histories¹⁰⁰ of the origins of modern football. But once the clubs were formed there was a relatively rapid movement towards incorporation, as Table 4 indicates. As Mason¹⁰¹ has described, several clubs did form themselves into limited liability companies under the Companies Acts in the 1880's but the drive towards incorporation was to come in the 1890's and beyond. Mason himself studied 47 clubs which were incorporated between 1886 (the year following legalisation of professionalism) and 1913. Table 4 shows a usual pattern of formation, followed by the club turning professional, closely followed by incorporation. On other occasions clubs formed themselves into limited liability companies just a year or so before turning professional. In the case of the clubs formed in the

nineteenth century, their incorporation was part of wider movements in industry in which organisations embraced the company legal form in increasing numbers in the last decades of the century.¹⁰² In the country at large the company legal form had 'triumphed' by 1914,¹⁰³ many businesses having realised the dangers of unlimited liability, and clearly football clubs were no exception. One example is provided by the case of BROWN v. LEWIS.¹⁰⁴ A spectator at Blackburn Rovers F.C. brought an action in the Divisional Court of Queen's Bench against the club after the collapse of a stand. The Committee were held by the court to be the persons liable. Blackburn Rovers duly became a limited liability company in the following year (see Table 4).

The one Football League club which had not adopted the company form, and remained a private club run by a committee, Nottingham Forest F.C., recently took steps to move towards incorporation.¹⁰⁵ The most immediate reason was the construction of a new £2 million stand, not to mention several £1 million transfer fees, made possible by the team's success under Brian Clough and Peter Taylor, which increased the risks of unlimited liability. However such legal steps proved more difficult than might have been anticipated for a club founded in 1865. As the club secretary pointed out in 1981:

"The converting of our members' club to a limited liability company is proving rather more difficult than originally envisaged and there is no certainty that it will ever be concluded . . .

The problems are mainly in the area of capital transfer tax and stamp duty and at present the matter is in the hands of our solicitors and accountants who are seeking certain decisions by the Inland Revenue."¹⁰⁶

The attempt to change Nottingham Forest from the status of a club to a limited liability company, despite its difficulties, completed the move of all professional football clubs to company status which began in the latter part of the nineteenth century as the mass market possibilities of football began to dawn on the officials who ran the game. Certainly the modern importance of this transition is well recognised. Peter Taylor points to the status of Nottingham Forest prior to 1982 as the "only private club in the League"¹⁰⁷ as a source of tension between the management of the club and the committee because of the enormous expenditure on wages and transfers:

"Should anything go wrong, all the club's debts would become the personal responsibility of the 200 members. They could be asked to find more than £10,000 each.

It was only sensible to change Forest into a limited liability company like the other ninety-one clubs. The process is a lengthy one but the members were willing to go through with it. The transfer from club to company is undoubtedly the most far-reaching innovation of our time at Nottingham . . . "¹⁰⁸

Taylor, though, points to the potential of a private association run by committee as opposed to a company run by directors:

"So Forest were a name in football only for their unique administration; alone among the ninety-two League clubs they were not a limited liability company. Forest had no directors; they were run by a nine man committee elected by the club's 200 members. There was no waiting

list for membership when Brian joined Forest. All the prospective applicants had melted away when the team were relegated from the First Division in 1972. Membership, though, was a bargain at that time; a couple of pounds a week secured a reserved seat, use of a private lounge and the exercise of a vote that gave the fan a real say in the running of his club.

A democratic club ought to have been successful yet . . . "109

The association of 'democracy' and the private football club is not by any means a recent notion. As Mason shows¹¹⁰ in his case study of the transition of Arsenal F.C. from club to company in the late nineteenth century, the reason for the eventual incorporation of many professional clubs was that they could not accommodate the degree of economic involvement in a mass leisure industry which was so rapidly enveloping the sport of football in the 1890's and beyond. The case of Arsenal F.C. is certainly instructive, though not necessarily representative. Formed by workers at Woolwich Arsenal in 1886, and run by a committee of working men elected by the membership, it embraced professionalism in 1891 but rejected the idea, initially, that it should become a limited liability company. According to Mason's account¹¹¹ the forces of 'democracy' managed, at first, to resist what they saw as a trend towards a "proprietary or capitalist club". However, in 1893, after the owner of Arsenal's ground demanded a rent increase, a nominee on the club's committee, and that the club should be responsible for the rates, limited liability was taken on. This was done in spite of the rejection of the demands made

by the landlord. Instead, it was decided, Mason notes, to raise funds to buy the club's own ground. Such divisions between 'participatory workers democracry' and the forces in favour of the proprietary or capitalist club were by no means widespread. Indeed much of Mason's empirical detail provides a direct reply to the more 'romantic'¹¹² thesis on the development of professional football clubs - that a GENERALISED participatory, working class democracy acted as the originating force behind the emergence of the clubs in the late nineteenth century.¹¹³ However, such divisions, where they occurred (and are still occurring) do indicate a more general shift in emphasis which was beginning to take place in the period before World War I, a shift moreover^{which} was to be decisive in the future control, by largely middle class shareholders, of professional clubs in the twentieth century.

THE DEVELOPMENT OF THE PLAYERS' ORGANISATION

Thus the player's origin as a legal subject was deeply embedded in the dominant legal and political discourses of the nineteenth century: discourses which comprised, amongst other elements, the rules relating to the retain and transfer system and the maximum wage system and the blanket authority of the private club, incorporated in the legal form of the limited liability company. In this context, it is significant that the Players' Union emerged somewhat later than the rules restricting the contracts, and indeed lives, of professional footballers in England. It struggled into existence, eventually in 1907, after abortive attempts in the 1890's which nevertheless still make it "the oldest continuous association of professional team sportsmen",¹¹⁴ and its employment structure has remained relatively stable ever since (see Tables 1.1 and 1.2). Of its chairmen,

only Jimmy Guthrie, in the immediate post-war period, has been a full-time officer, though the secretarial post has provided remarkably secure employment. The current association, in the 1980's:

"has approximately 2,750 members made up of some 98% of Football League professionals and apprentice professionals and a smaller percentage of semi-professional players with non-League clubs who are members of such Leagues as the Alliance League, Southern League and Northern Premier League.

Every Football League club appoints a delegate who is responsible for bringing to the notice of the members information circulated from the headquarters of the Association based in Manchester . . .

A Management Committee of eight members is elected by delegates at the Annual General Meeting of the Association which is held in October or November of each year. The Management Committee select the Chairman from amongst themselves . . .

The association has its own legal and financial advisers and the duties of the P.F.A. are to promote and protect the interests of the members in negotiations with the governing football authorities - the Football Association and the Football League - with a view to the abolition of all restrictions which affect the social and financial position of all players and to safeguard their rights at all times.

The association provides legal advice and

assistance when necessary in any action connected with the professional engagement of members and may represent a member at an Appeal or Disciplinary hearing conducted by the football authorities . . . The P.F.A. also assists members seeking new engagements at the end of a contract and gives advice to those members in the process of negotiating new contracts."¹¹⁵

As Geoffrey Green notes, the Association Football Players' Union emerged as a "direct result of the transformation of football clubs into limited liability companies, with their shareholders, paid managers and professional staff".¹¹⁶ The "professional staff", Green suggests, "like artisans of other trades, formed themselves into a union as a means of mutual protection."¹¹⁷ The birth of the organisation was not an easy one, however. In 1893, shortly after the formation of the Football League but still several years after the initial constitution of the professional footballer as a legal subject, there was an unsuccessful attempt to form a players' body. Mason notes¹¹⁸ that it consisted of the Wolverhampton Wanderers goalkeeper calling a meeting of League Club Captains over the suggestion from the authorities that a maximum wage might be instituted, or alternatively that no wages would be paid over the summer. In the event, of course, no maximum wage was imposed until 1901. However, there was another, more substantial effort to create a Union in 1898. It was pioneered by players of Manchester United at a meeting held in Manchester in January 1898.¹¹⁹ For Ian Taylor,¹²⁰ this signified a replacement or obstruction of "amateur ideologies of sport" by a "trade union consciousness amongst the early footballers". However although, in 1899, the following year, such a body was duly constituted¹²¹ as

a result of the "early battles for contractual freedom . . . by 1905 . . . it only existed in some meagre funds."¹²²

Thanks to the enthusiasm of Charlie Roberts and Billy Meredith,¹²³ in particular, the Players' Union was finally established in December 1907 and two major battles were commenced. Firstly, on the issue of accident insurance. The early stages of this 'fight' involved the provisions of the Workmen's Compensation Act of 1906 by which employers were held to be liable for accidents to their employees which occurred at the place, or in the course, of their employment. The Union brought its first legal actions on this issue, and in 1909 successfully established in court that professional footballers were 'workmen' within the meaning of the Act:

"The implications of these decisions and the following unsuccessful appeals by the FL, was that injured players were entitled to receive an income while injured; necessary medical expenses should be paid by the employer; and in the case of an injury that forced a player to retire, the player was entitled to a lump-sum payment as compensation."¹²⁴

This issue, however, became part and parcel of a more wide ranging, and deep-rooted feud between the players' organisation and the football authorities. This led to the first strike threat by the Union, in the 1909-1910 season. It emerged directly from Players' Union determination to take court action under the Workmen's Compensation Act 1906, and eventually involved the Union's decision to disaffiliate from the General Federation of Trade Unions (G.F.T.U.). This however was not simply a step away from the early, tenuous links with the trade union and labour movement in the country at large but rather a complex part of the

"internal machinations"¹²⁵ of the government of football at this stage of the Union's development. The case which established that a professional footballer was a "workman" within the meaning of the Workmen's Compensation Act, 1906 was WALKER v. CRYSTAL PALACE FOOTBALL CLUB LTD.¹²⁶ In that case, G. Walker, an employee of Crystal Palace F.C., was on a one year, weekly-paid, contract. The training regulations necessitated the player being at the ground every day at 10.30 am and to be under the supervision of the trainer for the remainder of the day. Walker sustained an injury to his knee during a training match, which, he argued, rendered him permanently incapacitated from earning wages in any suitable employment. The county court judge had held that Walker was a workman within the Act and duly granted compensation to him. However, the club appealed, without success, to the Court of Appeal in November 1909. Apart from insight into the language of the training regulations of the day, it is noteworthy that the judges in the case stressed that professional football came under the term "manual labour"¹²⁷ and wholly rejected the arguments of the club's counsel that the "game of football which the applicant was hired to exhibit is a sport or pastime, not work."¹²⁸

To confuse matters there is general distortion of the events surrounding the dispute.¹²⁹ For instance, Brierley, (a solicitor from Rawtenstall who was President of the League from 1936-1957; see Table 2.2) and League Secretary Howarth in their blatantly biased 'history from above'¹³⁰ suggest that:

"something like a crisis arose over the affiliation of the Players' Union with the Federation of Trades Unions, a national strike being threatened unless this was approved. The League was determined to

sanction no such alliance, and in collaboration with the Football Association, informed the players that it would not be tolerated. Governing bodies and clubs were agreed that they could not be at the mercy of a federation of unions which might call a suspension of football because of a strike in any of the associated trades, and in the end this view was accepted and everything was smoothed out."¹³¹

In fact, this passage probably tells us more about the prejudices of Messrs. Sutcliffe, Brierley and Howarth than any truths about the events leading up to and following the strike threat just prior to the 1909-1910 League programme. As Dabscheck¹³² demonstrates quite clearly, the conflict of 1909 did not ARISE from the Union's affiliation to the G.F.T.U. but rather G.F.T.U. affiliation resulted from the dispute, at least in its initial stages. The F.A., at the end of the 1908-1909 season, countered the Union's intention to take the legal action proposed WITHOUT the F.A.'s prior permission by threatening to ban Player's Union officials from the game (from May, 1909), having earlier withdrawn its recognition of the Union previously given in 1908. As Dabscheck is at pains to point out:

"It is important to stress that the P.F.A. (sic) only sought affiliation with the G.F.T.U. after the F.A. Council's resolution of 3 May!"¹³³

The F.A. had launched a brutal campaign against the Union; the Union responded by turning to the appropriate body, set up in 1899 by the T.U.C., for support. At the eleventh hour, just days before the season was due to start, and

following sterling work by Players' Union officials which gained widespread support inside and outside the football industry, not to mention the legal victory in the courts on the issue of accident compensation, a compromise agreement was reached. The Players' Union achieved a notable victory since the F.A. conceded the 'right' to legally represent its members before the courts. The Union had to agree to submit disputes in 'reasonable' time to the F.A., as its part of the bargain. However it also balloted its members on whether to disaffiliate from the notoriously weak and ineffectual G.F.T.U. as the F.A. and, especially, the Football League wanted. The Union members duly voted to disaffiliate.

Thus, the contrary claims of some of its most trenchant critics¹³⁴ who have simply viewed it as an elitist and deferential organisation betraying the labour movement and its own rank-and-file, the Players' Union in its early years displayed considerable nerve and strength, given the relatively small membership,¹³⁵ and, furthermore, achieved some unexpected legal progress.

It has been noted that the Players' Union developed in response to most of the football clubs becoming limited liability companies. As we have seen, the "trafficking in men, as when a footballer is hawked from one limited company to another,"¹³⁶ was the major legal restriction on football players by the early 1900's. Such a transfer system, based on the right to retain a player's registration, with little effective centralised control, was well installed by the time of the formation of the Association Football Players' Union in December 1907 at the Imperial Hotel, Manchester at a meeting chaired by Billy Meredith. This transfer system, however, designed by the Football League to protect clubs from enticement of their players by unofficial, unethical means, was soon to be challenged by

the Players' Union. A legal challenge to the retain and transfer system was mounted by the Union, which resulted in the courts' first sight of the issue of the 'legality' of the rules relating to control of players by club, League and F.A. The encounter was between:

"KINGABY v. ASTON VILLA FOOTBALL CLUB, a case reported in THE TIMES of 27 March 1912. Kingaby, an Aston Villa player, wished to leave the club, which placed him on the transfer list at what he considered to be an excessive fee. He therefore sued the club for breach of contract and conspiracy. The judge refused to let the case go to the jury, as no malice on the part of the club had been shown. Nobody in that case seems to have doubted the validity of the transfer system itself."¹³⁷

Sutcliffe, Brierley and Howarth, in their history of the first half-century of the Football League, make the extravagant and misguided claim that KINGABY v. ASTON VILLA F.C. showed that "the principles embodied in the retain and transfer system were established in law".¹³⁸ The truth was that in the early years of its existence the Players' Union was in such a deferential position in relation to the Football League, and the F.A., that to mount a full scale legal onslaught on the overweening control of the player by the club would have been well-nigh impossible. Indeed, the F.A., had to give PERMISSION to the Players' Union to contest the Kingaby case in the Law Courts as such action by a player was 'illegal' under F.A. rules,¹³⁹ and, since the legal challenge ended in defeat the Union was left not only disenchanted but in debt to the tune of £725¹⁴⁰ in court costs. As if to emphasise the extent of the subservient position the

players' organisation found themselves in, the Football League agreed to "absorb" the costs until the Union was more financially stable,¹⁴⁷ though:

"Just to emphasise who was really boss the League refused to allow Players' Union members to wear union badges on the field, in spite of their 'kindest and most sympathetic feelings towards the union'."¹⁴²

This context is important since it is clear that the Union DID have the will - though probably not the means - to challenge the legal validity of the Football League rules. The immediate context of the Kingaby case was in fact more complex than many previous commentators would have us believe. For instance, it is simply not the case that KINGABY v. ASTON VILLA F.C.¹⁴³ meant that "the 'retain and transfer' system was vindicated in law".¹⁴⁴ As Dabscheck's research into Players' Union records shows, in 1910:

"the Football League and the Southern League entered into a transfer agreement where both Leagues agreed to the payment of transfer fees for players moving from one league to the other. The minutes of P.F.A. (sic) management committee meetings reflected a desire to test the legal validity of these laws. A possible test case presented itself when a Mr. Kingaby initiated legal proceedings against the Aston Villa club. Kingaby had played for Aston Villa in 1906, but had not been able to establish himself as a regular member of the team and had joined a SL club in 1907. After the 1910 transfer deal, Aston Villa demanded a £350 transfer fee, later reduced to £300 on appeal, for his services. An approach was

made to Kingaby's solicitors and it was agreed that the P.F.A. would represent Kingaby in a test case of the transfer system. However, during 1911, for reasons which are not clear, the P.F.A. and Kingaby fell out. Firstly Kingaby either lost interest in the case or decided to proceed without the P.F.A. Consequently, at the 1911 annual general meeting the P.F.A. decided to drop the Kingaby case. Secondly, it was later reported that Kingaby's solicitors were to initiate legal proceedings over a supposed libel contained in the P.F.A. newsletter. Either because of this threatened libel or because of a desire to test the transfer system's legality come what may, the action was continued with. Unfortunately, the presiding judge, Mr Justice Lawrence, only concerned himself with whether or not Aston Villa had observed the F.L.'s rules, rather than the 'broader' question of whether or not these rules were 'legal'. Hence he found against Kingaby and the P.F.A."¹⁴⁵

Or, perhaps, it was more a question of the Union's lawyers' inefficiency. As barrister Edward Grayson has put it:

"In 1912, five years after a revival of the then professional football Players' Union . . . the professional footballer's retain and transfer system arrived in court for the first time. Unfortunately the K.C. who led the unsuccessful plaintiff was perhaps a better goal-keeper for England v. Ireland in 1882 than he was a lawyer

30 years later. His submissions claimed damages for various torts, breach of contract and an alleged malicious charge of an excessive transfer fee, when the key issue as it was 50 years later in the EASTHAM CASE was unreasonable restraint of trade in contract. Not surprisingly, the judge held no cause of action had been established."¹⁴⁶

So the first challenge, in the law courts at least, to the retain and transfer system, instigated by the Players' Union ended in defeat. Not surprisingly, the players' body was far from satisfied. Dougan and Young note the response of H.J. Newbould, then secretary, who:

"did not criticise the learned judge . . . but should have liked the matter decided by someone who understood the workings of professional football as well as the law'. However, by bringing this case the Union 'forced the facts concerning the transfer system before the legislators and the public'. As a result of this action players were enabled to claim a share of transfer fees."¹⁴⁷

The retain and transfer system was to remain completely intact for another half-century after the Kingaby case; it may have been forced firmly into the public spotlight by bringing a court case but its outcome neatly symbolised the relationships then prevailing in the football industry. Indeed, through the history of professional football the players' body has, it seems, only been consulted¹⁴⁸ when circumstances suited the authorities and decision making has not often been as a direct result of players representation. The various histories¹⁴⁹ of the two controlling

bodies are a glaring testament to this. The lack of a written history of the Players' Union until very recently is a reflection of the paternalism and arbitrary authority exercised by the F.A. and F.L. in their dealings with the footballers' organisation. Dougan and Young,¹⁵⁰ for instance, suggest that Fabian and Green's¹⁵¹ mammoth four volume history of association football only mentions the Players' Union twice- on page 8 of Vol. 1 and page 313 of Vol. 2. This, while not quite accurate as there are in fact at least two other references elsewhere in the text, does indicate the extent to which, in the general literature on the industry and the sport of football, the role of the Players' Union has been ignored and the absence is particularly manifest in such an 'authoritative' work, which devotes an inordinate amount of space to the amateur game. Also, the Kingaby judgement, as has been seen, did not go their way and following the 1909 'settlement' the "League . . . conveniently asserted its faith in the maximum wage."¹⁵² By the outbreak of the 1914 war, the limited company, in the form of the football club, the Football Association and the Football League was still the main determinant of the social and legal status of the professional footballer in England, despite the emerging players' organisation. The structure of the football industry today, in general, still bears the hallmarks of the late nineteenth century when it was made. The clubs, though incorporated like so many businesses, and like other kinds of similar organisations some being 'public' companies, some 'private' in form, frequently diverge from more general modern corporate practice.¹⁵³ The controlling bodies of the game, and the individual clubs still exercise a power which is derived from the legal and social framework of 'master' and 'servant',¹⁵⁴ from the days when regular working habits and the keeping of restrictive contracts were instilled by

iron 'discipline', not forgetting a benevolent paternalism. As Mason has noted:

" . . . if the players were sometimes treated with severity, they were also valuable club assets . . . The manifestation of this realisation was a strange kind of paternalism in which the players were treated rather like some Victorian middle-class wives; stifling their independence perhaps, but cushioning them from some of the natural contingencies of life which most working people could rarely face with equanimity."¹⁵⁵

The F.A. and F.L. - and its members clubs - were given licence by the law just as players were in turn given their legal right to practice their chosen 'profession' by the legislative action of the F.A. and the League in the 1880's. However the organisation of the players' diverse interests was slow in developing, and by the time of the emergence of a stable Players' Union in 1907, the scene was set for PRIVATE power in the shape of the clubs, and controlling bodies, to regulate the industry for the foreseeable future. It was to be a long, slow journey to the law courts of 1963, and the struggle which lay beyond.

In this Chapter I have drawn on various materials currently available to suggest that the birth of the footballer as a legal subject cannot simply be put down to an 'economic' determinism nor a liberal idealism. There was no necessary reason for footballers to be constituted as legal professionals or for their union to be recognised by the governing bodies of the sport in the period 1863-1914. The rules and regulations - not to mention custom and practice - which designated the professional footballer as legal rather than illegal after 1885 are part of a discursive

formation which constructed social and legal 'positions' (often contradictory and shifting over time) through which the meaning of employment as a professional footballer in late Victorian and Edwardian England was signified. These statuses, 'legal' and 'illegal', are complex formations which were constantly struggled over and negotiated in this period. The Players' Union's emergence acted as a further complicating factor in the long drawn out quest for full legislation of the professional player, for recognition as a universal legal subject, 'free' and 'equal' with respect to all other legal subjects. This search, as we shall see in Chapter 4, was always going to be somewhat illusory for the professional footballer, but the role of the Union was to be crucial nevertheless.

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76. ibid., page 43.
77. ibid., page 43.
78. ibid., page 44, Dougan and Young note that in 1893 a signing-on bonus of £10 became statutory.
79. Green: "The Football Association" op. cit., page 68.
80. see Mason, op. cit., Ch. 4.
81. Green: "The Football Association", op. cit., page 69.
82. ibid., page 69.
83. THE STORY OF FOOTBALL (Marshall Cavendish, 1978), page 38.
84. op. cit., page 41.
85. op. cit., Ch. 4.
86. ibid., pages 95-96.
87. ibid., page 103; see also pages 100-101.
88. ibid., page 101.
89. ibid., page 103.
90. see 'Creston'(alias N.L. Jackson) op. cit.
91. Anon: "Some Tendencies of Modern Sport", page 141.
92. Ensor, op. cit., page 755.
93. 'Creston', op. cit., page 34.
94. Graves, op. cit., page 882.
95. see Mason, op. cit., Ch. 4, especially page 99, on illegal payments (bonuses, payments for 'broken time' and so on) to a number of players, and their subsequent disciplinary punishment.
96. Maurice Golesworthy: ENCYCLOPAEDIA OF ASSOCIATION FOOTBALL (Robert Hale, 1976), page 71. The F.A. was

- responding to the possible financial liability of crowd disasters such as that at the Scotland v. England international at Ibrox Park, Glasgow in 1902.
97. Sharpe, op. cit., page 15.
 98. Golesworthy, op. cit., page 71 states that none of the F.A. shareholders is entitled to receive any bonus or dividend or any profit from membership. The Football League, although similarly 'non-profit making' have recently set up an overtly commercial "Executive Club" which is designed to make profits; see "The Top Fan Club" in THE GUARDIAN, November 13th 1980.
 99. recent 'notorious' examples are provided by the rejection by the member clubs, at the extraordinary general meeting in Solihull, on Monday, February 9th 1981 of proposals to reduce the voting majority from the traditional $\frac{3}{4}$ to $\frac{2}{3}$, and to impose a 50% down payment on transfer fees with the rest to be paid within 12 months: see Charles Burgess' slightly ironic: "The monolith moves" in The GUARDIAN February^{10th} 1981.
 100. see Ch. 1 of this thesis above.
 101. For an empirical account of some aspects of the adoption of limited liability in the football industry before 1914 see Mason, op. cit., Ch. 2.
 102. see Paddy Ireland: "The Rise of the Joint Stock Company", paper given to CONFERENCE ON CRITICAL LEGAL SCHOLARSHIP, University of Kent, April 1981, page 1.
 103. ibid., page 24.
 104. (1896) 12 T.L.R. 455.
 105. Nottingham Forest became a limited liability company in 1982.
 106. correspondence from K. Smales to me, February 16th, 1981.
 107. (with Mike Langley): WITH CLOUGH, BY TAYLOR (Sidgwick and Jackson, 1981), page 145.
 108. ibid., pages 145-146.

109. *ibid.*, page 84.
110. *op. cit.*, Ch. 2.
111. *ibid.*, pages 34-35. See also R. Day: "The Motivation of Some Football Club Directors: An Aspect of the Social History of Association Football, 1890-1914", unpublished MA thesis, University of Warwick, 1976, for a more detailed account of the social forces behind the pre-1914 Arsenal F.C.
112. the best known instances are Ian Taylor " 'Football Mad': A Speculative Sociology of Football Hooliganism" in Eric Dunning (ed): *THE SOCIOLOGY OF SPORT* (Cass, 1971), and "Soccer Consciousness and Soccer Hooliganism" in Stan Cohen (ed): *IMAGES OF DEVIANCE* (Penguin, 1971). See also Ch. 1, above.
113. Charles Korr: "West Ham United Football Club and the Beginnings of Professional Football in East London, 1895-1914" in *JOURNAL OF CONTEMPORARY HISTORY* Vol. 13, 1978, provides another direct retort to Taylor's speculative thesis by showing that, in the case of one of Taylor's examples at least, "working-class participation was limited to work, either as players or supporters" (page 230).
114. Dabscheck, *op. cit.*, page 229.
115. taken from the text of an information sheet produced by the Professional Footballers' Association in 1980. The 1983 figure for membership was considerably lower due to massive increases in redundancies amongst players between 1980 and 1983; see later in this thesis.
116. Green, "A Diary of the Years", *op. cit.*, page 26.
117. *ibid.*, page 26.
118. *op. cit.*, page 111. See Mason pages 111-117, generally, on the early origins and difficulties of organising professional players into a union.

119. Alan Gowling: FOOTBALL INSIDE OUT (Souvenir Press, 1977), page 164.
120. Ian Taylor: "Spectator Violence Around Football: The Rise and Fall of the 'Working Class Weekend' " in RESEARCH PAPERS IN PHYSICAL EDUCATION Vol. 3 No. 2, 1976, page 5.
121. Dougan and Young, op. cit., page 44. Taylor, ibid., page 5, writes of the body meeting in January 1898 as the Union of Professional Footballers, though Golesworthy, op. cit., page 165, calls it the National Union of Association Players. The eventual 1907 body was officially entitled the Association Football Players' Union.
122. ibid., page 47. Dabscheck, op. cit., page 233 says that failure of the 1893 and 1898 efforts was due to lack of F.A. recognition.
123. who were Manchester United colleagues.
124. Dabscheck, op. cit., page 236.
125. ibid., page 237.
126. 1910 1 KB 87.
127. Fletcher Moulton L.J. page 93.
128. page 89.
129. Dabscheck, op. cit., emphasises this confusion in the literature ; Mason, op. cit., and Dougan and Young, op. cit., also escape criticism here as they, too, relied on Players' Union records.
130. Charles Sutcliffe, J.A. Brierley and Fred Howarth: THE STORY OF THE FOOTBALL LEAGUE 1888-1938 (Football League, Preston, 1938).
131. Sharpe (ed), op. cit., page 16. Part 1 of Sharpe (ed), in fact, is an abridged version of Sutcliffe et al. See also Goleworthy, op. cit., page 165, for another inaccurate account of the issue.

132. op. cit., pages 237-241. See also the precise account given by Mason, op. cit., pages 111-114.
133. ibid., page 239.
134. see, for instance, in the modern era, Hey and Nickolds (eds) op. cit., individual issues of FOUL magazine, or Stephen Wagg: THE
FOOTBALL WORLD (Harvester, 1984).
135. see proportions of Players' Union members to professional footballers in these years see Mason, op. cit., page 111.
136. Graves, op. cit., page 882.
137. Keeton, op. cit., page 131.
138. Sharpe, op. cit., page 16.
139. Mason, op. cit., page 113.
140. ibid., page 115.
141. Dabscheck, op. cit., page 243.
142. Mason, op. cit., page 115.
143. as well as The TIMES report, see ENG. and EMP. DIGEST REPL. VOL (Green Band) Vol. 1 page 37, No. 248. Mason op. cit., page 133, footnote 141, cites the fact that the Players' Union magazine, FOOTBALL PLAYERS MAGAZINE Vol. 3 No. 10 September 1913, and the BIRMINGHAM GAZETTE AND EXPRESS, March 27 and 28, 1912, both carried accounts.
144. J.R. Witty, op. cit., page 283.
145. Dabscheck, op. cit., pages 242-243.
146. "Injuries on and off the Sporting Field" in J. Neville Turner and Charles Jenkins (eds): SPORT AND THE LAW: Proceedings of a Conference held at University of Birmingham, July 1978 (Faculty of Law, Department of P.E., University of Birmingham, 1978), pages 39-40.
147. op. cit., page 58.
148. for instance at the seminar of Football League club representatives at Solihull in October 1980 the P.F.A. were "called in" (as Cliff Lloyd put it) on

only one session, that concerning field discipline.

- 149. see Ch. 1 above.
- 150. op. cit., page 42.
- 151. op. cit.
- 152. Dougan and Young, op. cit., page 55.
- 153. see Keeton, op. cit., Ch. 3.
- 154. for a discussion of this phenomenon in general, though with a number of implications for the study of the work relations of the football industry, see Ken Foster: "From Status To Contract: Legal Form and Work Relations, 1750-1850" WARWICK LAW WORKING PAPERS Vol. 3 No. 1 (University of Warwick, 1979).
- 155. op. cit., pages 106-107.

TABLESTABLE 1.1 CHAIRMEN OF THE PROFESSIONAL FOOTBALLERSASSOCIATION

(Formerly the Association Football Players -
and Trainers - Union)

H.L. Mainman	1907-1910
E.H. Lintott	1910-1911
Colin Veitch	1911-1918
Charlie Roberts	1919-1921
J. Lawrence	1921-1922
J.A. Fay	1922-1929
H. Matthews	1929-1930
A. Wood	1930-1931
D.M. Robbie	1931-1936
A.F. Barrett	1936-1937
Sammy Crooks	1937-1946
Jimmy Guthrie	1946-1957
Jimmy Hill	1957-1961
Tommy Cummings	1961-1963
Malcolm Musgrove	1963-1966
Noel Cantwell	1966-1967
Terry Neill	1967-1970
Derek Dougan	1970-1978
Gordon Taylor	1978-1980
Alan Gowling	1980-1982
Steve Coppel	1982-1983

(Source; the P.F.A., 124, Corn Exchange Buildings,
Hanging Ditch, Manchester.)

TABLE 1.2 SECRETARIES OF THE PROFESSIONAL FOOTBALLERS
ASSOCIATION

(Formerly the Association Football Players -
 and Trainers - Union)

H.C. Broomfield	1907-1910
A.J. Owen	1910-1913
H.J. Newbould	1913-1929
J.A. Fay	1929-1953
Cliff Lloyd	1953-1981
*Gordon Taylor	1981-

* ex-chairman of the P.F.A., Gordon Taylor, was appointed Assistant Secretary in November 1980 at the Annual General Meeting, with a view to replacing Cliff Lloyd on his retirement from the post.

(Source; the P.F.A., 124, Corn Exchange Buildings,
 Hanging Ditch, Manchester.)

TABLE 2.1 PRESIDENTS OF THE FOOTBALL LEAGUE

William McGregor*	1892-1894
J.J. Bentley	1894-1910
J. McKenna	1910-1936
Chas. E. Sutcliffe	1936-1939
W.C. Cuff	1939-1949
Arthur Drewry	1949-1955
A.H. Oakley	1955-1957
Joe Richards	1957-1966
Len Shipman	1966-1974
Lord Westwood	1974-1981
Jack Dunnett	1981-

* founder and first Chairman of the Football League from its inception in 1888 to 1892 when he became its first President.

(Sources; compiled from Ivan Sharpe (ed): THE FOOTBALL LEAGUE JUBILEE BOOK (Stanley Paul, 1963), Alan Hardaker: HARDAKER OF THE LEAGUE (Pelham, 1977), and news cuttings 1974-1983.)

TABLE 2.2 SECRETARIES OF THE FOOTBALL LEAGUE

H. Lockett	1888-1902
Tom Charnley	1902-1933
Fred Howarth	1933-1957
Alan Hardaker	1957-1977
Graham Kelly	1977-

(Sources; compiled from Ivan Sharpe (ed), op. cit.,
Alan Hardaker, op. cit., and news cuttings 1974-1983.)

TABLE 3.1 (a) PRESIDENTS OF THE FOOTBALL ASSOCIATION

A. Pember	1863-1866
E.C. Morley	1866-1873
Major Sir Francis Marindin	1873-1890
Lord Kinnaird	1890-1923
Sir Charles Clegg	1923-1937
W. Pickford	1937-1938
Earl of Athlone	1938-1955
Prince Philip, Duke of Edinburgh	1955-1957
Duke of Gloucester	1957-1963
Earl of Harewood	1963-1971
Duke of Kent	1971-

(Source; the Football Association, 16 Lancaster Gate,
London.)

TABLE 3.1 (b) CHAIRMEN OF THE F.A. COUNCIL
 (formerly F.A. Committee)

J.C. Clegg (later, in 1927, Sir Charles Clegg)*	1889-1937
A.G. Hines	1937-1939
M.C. Frowde	1939-1941
Sir Amos Brook Hirst	1941-1956
Arthur Drewry	1956-1961
Graham Doggart	1961-1963
Joe Mears	1963-1966
Sir Andrew Stephen	1966-1976
Professor Sir Harold Thompson	1976-1981
Bert Millichip	1981-

(Sources; the Football Association, 16 Lancaster Gate, various articles and books, news cuttings 1974-1983.)

* according to the F.A. prior to 1938 Chairman and President were "apparently synonymous", but this is inaccurate. From 1889-1923, Clegg was only Vice-President.

TABLE 3.2 SECRETARIES OF THE FOOTBALL ASSOCIATION

E.C. Morley	1863-1865
R.W. Willis	1865-1867
R.G. Graham	1867-1869
C.W. Alcock	1869-1894
Sir Frederick Wall	1894-1934
Sir Stanley Rous	1934-1962
Sir Dennis Follows	1962-1973
Ted Croker	1973-

(Sources; Sir Stanley Rous: FOOTBALL WORLDS: A Lifetime in Sport (Faber and Faber, 1978), news cuttings 1974-1983, the Football Association, 16, Lancaster Gate.)

TABLE 4 FORMATION, INCORPORATION AND PROFESSIONAL STATUS
OF PROFESSIONAL FOOTBALL CLUBS IN ENGLAND AND
WALES
(member clubs of the Football League, 1982/1983
season)

	YEAR FORMED	YEAR TURNED PROFESSIONAL	YEAR BECAME LIMITED LIABILITY CO.
Aldershot	1927	1927	1927
Arsenal	1886	1891	1893
Aston Villa	1874	1885	1896
Barnsley	1887	1888	1899
Birmingham City	1875	1885	1888
Blackburn Rovers	1875	1880	1897
Blackpool	1887	1887	1896
Bolton Wanderers	1874	1880	1895
Bournemouth	1899	1912	1914
Bradford City	1903	1903	1908 and 1983
Brentford	1888	1900	1902
Brighton	1900	1900	1901
Bristol City	1894	1897	1897 and 1982
Bristol Rovers	1883	1897	1896
Burnley	1881	1883	1897
Bury	1885	1885	1897
Cambridge United	1919	1946	1948
Cardiff City	1899	1910	1910
Carlisle United	1904	1904	1921
Charlton Athletic	1905	1920	1919
Chelsea	1905	1905	1905
Chester	1884	1902	1909
Chesterfield	1866	1891	1871
Colchester United	1937	1937	1937
Coventry City	1883	1908	1907

Crewe Alexandra	1876	1893	1892
Crystal Palace	1905	1905	1905
Darlington	1883	1908	1891
Derby County	1884	1884	1896
Doncaster Rovers	1897	1885	1905 and 1920
Everton	1878	1885	1892
Exeter City	1904	1908	1908
Fulham	1880	1898	1903
Gillingham	1893	1894	1893
Grimsby Town	1878	1890	1890
Halifax Town	1911	1911	1911
Hartlepool	1908	1908	1908
Hereford United	1924	1924	1939
Huddersfield Town	1908	1908	1908
Hull City	1904	1905	1905
Ipswich Town	1880	1936	1936
Leeds United	1919	1920	1920
Leicester City	1884	1894	1894
Lincoln City	1883	1892	1892
Liverpool	1892	1892	1892
Luton Town	1885	1890	1897
Manchester City	1887 (1895 as Man. City)	1887	1894
Manchester United	1878 (1902 as Man. Utd.)	1885	1907
Mansfield Town	1905	1905	1905
Middlesbrough	1876	1889 and 1899	1892
Millwall	1885	1890	1890
Newcastle United	1882	1889	1890
Newport County	1912	1912	1912
Northampton Town	1897	1901	1901

Norwich City	1905	1905	1905
Nottingham Forest	1865	1889	1982
Notts County	1862	1885	1888
Oldham Athletic	1894	1899	1906
Orient	1881	1901	1906
Oxford United	1896	1949	1949
Peterborough United	1923	1934	1934
Plymouth Argyle	1886	1903	1903
Portsmouth	1898	1898	1898
Port Vale	1878	1885	1911
Preston North End	1880	1882	1893
Queens Park Rangers	1885	1898	1899
Reading	1871	1895	1895
Rochdale	1900	1907	1910
Rotherham United	1884	1905	1920
Scunthorpe United	1904	1912	1912
Sheffield United	1889	1889	1899
Sheffield Wednesday	1867	1887	1899
Shrewsbury Town	1886	1905	1936
Southampton	1886	1905	1936
Southend United	1906	1906	1919
Stockport County	1883	1891	1908
Stoke City	1863	1885	1908
Sunderland	1879	1886	1906
Swansea City	1900	1911	1912
Swindon Town	1881	1894	1894
Torquay United	1898	1921	1921
Tottenham Hotspur	1882	1895	1895
Tranmere Rovers	1883	1912	1920
Walsall	1888	1888	1921
Watford	1891	1897	1909
West Bromwich Albion	1879	1885	1891
West Ham United	1900	1900	1900
Wigan Athletic	1921	1932	1932

Wimbledon	1889	1964	1964
Wolverhampton Wanderers	1877	1888	1888 and 1982
Wrexham	1873	1912	1912
York City	1922	1922	1922

(Sources; compiled from Rothmans Football Yearbooks, official club programmes, the secretaries of several football league clubs.)

TABLE 5 FORMATION OF FORMER MEMBER CLUBS OF THE FOOTBALL
LEAGUE

The following clubs have also been members of the Football League at one time or another but are now either defunct or non-League clubs:

	YEAR FORMED
Aberdare Athletic	1920
Accrington Stanley	1876
Ashington	1888
Barrow	1901
Bootle	1881
Bradford Park Avenue	1907
Burton United	1890
Burton Wanderers	1893
Darwen	1875
Durham City	1920
Gainsborough Trinity	1890
Gateshead	1899
Glossop North End	1890
Loughborough Town	1890
Merthyr Tydfil	1910
Middlesbrough Ironopolis	1885
Nelson	1882
New Brighton	1890
Northwich Victoria	1880
Southport	1888
Stalybridge Celtic	1920
Thames	1927
Workington	1884

CHAPTER 3: RESPECTABILITY AND DEFERENCE

"I am grateful also to the Football Association and appreciated the address and the certificates presented to me when I broke the international appearance record. Football has been kind to me."¹

In the analysis of the historical development of the professional footballer as legal subject, it is important to recognise the Players' Union's troubled re-emergence after the First World War, when professional football in England was substantially interrupted. The 1914-18 conflict marks a watershed in the history of the legal relations of the industry; it separated the 'early years' from a period which was characterised by a consolidation of control over the player by the F.A., Football League and individual football club; a phase, moreover, which stretches until the late nineteen -fifties. The player in this period was hamstrung by the maximum wage and the retain and transfer system, not to mention the deference to authority which such restrictions engendered in the daily lives of professional footballers in England. Furthermore, the player's respectable legal and social status which had been effectively constituted by World War I was enhanced by the F.A.'s recognition of his union as a legal subject able to sue and be sued in the courts, and with certain other capacities and attributes of legal personality. But was the player at this time really a 'worker' and his representative organisation really a union?² One of the early sociologists of soccer, Ian Taylor, in his speculative theses on football claims that:

"The P.F.A. fell out of existence in 1919 (with 40 members) and was of no significance during the period of the soccer consciousness (1920-1940)."³

and also that:

"The revival of the Professional Football (sic) Association and its achievements between 1945 and 1963 would have been inconceivable during the inter-war period. The P.F.A. would have been irrelevant in the sense that players were not employees in any conventional sense . . ."⁴

There are important errors in such claims, both factual and theoretical. Although Taylor has himself made a number of criticisms of his original arguments on the development of professional football,⁵ it remains extremely contentious to put forward the view that there was a split between a "soccer consciousness" (in other words a sub-culture uninterested in money and upward social mobility) BEFORE 1945 and a process of incorporation into "bourgeois" lifestyles AFTER World War 2, which is, essentially, Taylor's observation. On the contrary, a more careful⁶ analysis of the Union's history in this period reveals that the whole of the 'era' from 1918 to 1960 is one of resistance to an almost absolutist control which only finally achieved its 'symbolic' breakthrough with the abolition of the maximum wage in 1961 and the George Eastham court case in 1963.

Such an absolutist control had been developed, as is argued in Chapter 2, in the pre-war days of 1863-1914. The nostalgic picture of late Victorian and Edwardian England as a Golden Age⁷ of sport from which there has since been a steady decline is a blatant nonsense. As Dobbs argues,⁸ there was conflict between amateurs and the new professionals, class snobberies, misguided patriotism and narrow chauvinism in all sports (cricket, rugby, football etc), especially in the years from 1890-1914; it was not at all the idyllic scene that many Edwardians and their subsequent historians sought to paint. Professional football, too, had the added burden of the firmly instituted restrictive regulations,

already accepted as a 'fact of life' by players, clubs, administrators and spectators alike. However, the notion of a Golden Age is not just (falsely) applicable to the pre-1914 period; a more deep-rooted belief in English football mythology is in the near-immortality of the 1920's, 1930's, 1940's and 1950's. Such mythology was perpetuated by a variety of discourses about football in an England whose dominant position in the Empire and in the world at large was gradually being subverted. These discourses - journalistic, sociological, criminological, legal, official, not to mention 'popular' - are still very much with us in the present, constantly enabling the contemporary status of the footballer to be spoken of, and indeed created, by reference to the glorious past, the 'good old days' when players knew their place and England ruled the (football) world.

ABORTIVE STRUGGLES OF THE PLAYERS' UNION 1918-1960

The beginning of this immediate post-1918 period marked a renewed industrial 'militancy' amongst some football players, particularly the more London based brethren who tried to recruit the support of sections of the trade union movement. In 1919 a number of well known players in London, especially from Arsenal F.C., tried to organise a new union which was to have the backing of London trade union leaders.⁹ However, although the body did swiftly become a registered trade union, the newly elected chairman of the original Players' Union - the ubiquitous Charlie Roberts - persuaded the breakaway group to rejoin the Manchester based organisation, which as Dabscheck notes¹⁰ they duly did. This move, incidentally, signified the end of formal, continuous, organised trade union support for football players, as the official union had been from its birth generally separated from the union and labour movement at large. It continued to be so throughout the next sixty

years, actually increasing its isolation in the early nineteen-seventies when it decided to seek registration under the Tory government's INDUSTRIAL RELATIONS ACT of 1971, thereby leading to its exclusion from the Trades Union Congress.¹¹ The new body of 1919 was renamed the Association Football Players and Trainers Union, thus widening its representative base for the staff of professional, or semi-professional, clubs. It was to face severe battles over the next fifty years on all fronts, not least the struggles to increase and - eventually - abolish the maximum wage limitation.

Immediately prior to World War I, following the upheavals of the players' 1909 strike threat, as Dougan and Young point out, "for the time being the F.A. felt the situation sufficiently stable to allow a minimum wage - of £208 per annum - to replace the previous maximum wage", whilst the Football League "conveniently asserted its faith in the maximum wage".¹² That "faith" was to be ruthlessly imposed on the players' organisation almost as soon as it had reconstituted itself. As Peter Douglas puts it, in his account of the history of the Players' Union:

"Footballers' pay was the burning question almost from the outset and the Union's history is peppered with attempts to raise the maximum wage for professional players: it was £4 a week in 1901 and rose to £9 after the First World War. It was actually REDUCED within three years when the League Management Committee voted to cut the maximum wage to £8 in 1921, after the Union had asked for £10.

So it remained until 1947 when a new minimum wage was established: £7 per week during the season, reducing to £5 during the summer. A skilled craftsman

would have earned £3 to £4 a week at that time."¹³

The 1919 London players' body had been organised around the issue of the League's miserliness,¹⁴ and in the general industrial context of the early 1920's the football authorities' reduction of the maximum wage was not entirely unexpected. Nevertheless, the union under the Chairmanship of Roberts was relatively successful:

"Within the next few months (the union) negotiated a fairly substantial wage increase from the F.L.; for the thirty-nine weeks of the playing season only, the F.L. agreed to a maximum wage of ten pounds a week. And again, in the following year (the union) secured an all-year maximum wage of nine pounds a week, a minimum of five pounds a week, with one pound increments determined by a yearly seniority system, and the introduction of two pounds a win and one pound a draw bonus money. It is not clear however, if these wage increases resulted from the bargaining skills of (the union) leaders PER SE or if they were more a result of the general price inflation experienced after the war and a realisation by the F.L. management committee that they had little choice but to pay such wages and in the circumstances it was best to appear to be reasonable and generous. This 'calculative' interpretation of the F.L. management committee is consistent with the events of 1922, where they successfully forced a 20 per cent wage cut on professional footballers."¹⁵

There have been other examples of wage cuts for professional footballers in the history of the industry,¹⁶ but there have been few such ignominious defeats for the Union in its lifetime to date. The result was a deep disillusionment, amongst players, with the activities of the union. As Dabscheck notes, membership of the Players' Union "crumbled to a mere few hundred, and for the rest of the 1920's (the Union) was really only an organisation in name".¹⁷

This relative weakness of the Union was to have wider repercussions than on just the issue of wages. It extended to all aspects of the players' lives. Walvin contrasts the working lives of players with other industrial workers of the inter-war era:

"Footballers, with a weak union and with few alternative means of employment, were effectively controlled by a system of work discipline which would have proved intolerable to any other group of workers".¹⁸

Not, however, that this necessarily proved all powerful. Walvin, points out that:

"Despite the arbitrary manner in which footballers were fined, suspended and banned from their work - and that without real redress or even representation - there was quite obviously no effective deterrent to 'bad behaviour' on the field and football incidents were a weekly event."¹⁹

Nevertheless, it was an imposing system of interlocking controls over the player which the 're-born' Union of the 1930's under the Secretaryship of Jimmy Fay (a long standing member of the management committee since 1912,²⁰ and Chairman in the ill-fated 1920's - see Table 1.1) aimed to dismantle. The immediate task was the rebuilding of membership, which Fay managed in spectacular fashion. But

once that was accomplished, the union turned its attention to fighting the old battles anew. The issues involved included successfully defending those players in 1932, in certain parts of the country, who were unemployed and found themselves denied unemployment benefit on the grounds that they were seasonal workers,²¹ fighting off a League proposal to "free clubs from paying wages to players who had suffered long term injuries"²² and generally pushing for better overall conditions for footballers.²³ However, it was of course the iniquitous retain and transfer system which still loomed largest of the problems which the Union faced. Charlie Roberts, who spent "thirty-seven years working for the well-being of professional footballers"²⁴, was one of the union's most vociferous opponents of the system. As Dougan and Young note:

"In 1933, speaking as Vice-President, Charlie Roberts urged the P.U. to express itself in the strongest terms 'against a (transfer) system that can take a living from a player.'"²⁵

The resolution, following Roberts' speech, which was delivered to the Secretary of the Football League, protested against:

"the present Transfer System, which metes out to players very harsh and unfair treatment, causing many of them to go out of League Football, or to leave the country, and in certain cases preventing them from earning a living. It is un-English and out-of-date . . . "²⁶

However "un-English", there was no change in the authorities' position, though by all accounts²⁷ the outbreak of World War II in 1939 came as something of a relief to the League who were apparently tiring of the Union's persistence on the issue; at least the beginning of hostilities with

Germany meant that "contracts were cancelled"²⁸, players unemployed, and the Players' Union (temporarily) silenced. All this confirms Dabscheck's opinion that:

"The DESIRE to confront the FL and secure improvements was maintained."²⁹

This in no way accords with Taylor's claim that the Union was of "no significance during the period of the soccer consciousness (1920-1940)". The independence of the union from the League was clearly still suspect as it had been prior to 1914, but the WILL to change the legal and social position of the professional footballer in England was undoubtedly present in this period, particularly in the 1930's, and the practical effects of union activity, notably in emphasising to the membership the gains to be had from claims for 'injury benefit' under the Workmen's Compensation Act,³⁰ were there for all to see. Players clearly voted with their wallets, as the result of Fay's membership drive was to increase members to almost 2,000 by 1939.³¹ Neither did the Second World War disrupt the activity of the union as it had done in the 1914-1918 war. Fay, who "to his credit . . . kept things going from 1930 on",³² transferred the union offices to his home in Southport³³ for the duration of the war. The continuation of trade union work through that period proved vital when the time came to prepare for the post-war resumption of the industry. However, there is little doubt that the 20's and 30's produced nothing in the way of major changes in the conditions of employment of professional footballers. As Stanley Matthews recalls:

"I remember when I first joined the Players' Union in 1932. I was playing for Stoke then, and a Mr. Fay called at the ground every week to talk to the lads about the benefits of joining

the Union. The club management objected, but they obviously thought the Union would never amount to much. Understandably, perhaps, because less than half the players joined up. Subscription was two shillings a week then, out of a wage of five pounds, so it was never really expensive - but you could buy a few pints of beer for a couple of bob in 1932, and some of the boys thought more of their pint than of Mr. Fay's arguments. Perhaps they were right, too, because although the Union achieved some benefits it was years before the big breakthrough came . . ."³⁴

The post-1945 football industry was, of course, to undergo major changes. As Geoffrey Green eloquently puts it:

"Almost as a natural consequence, there next came a change of fashion in kit and playing equipment, heavily influenced by the Continent and South America. Mini-shorts and ballet-type footwear became the vogue, taking the place of constricting knee length trousers and heavy boots, fit more for soldiers footslogging in the mud of Flanders than for footballers."³⁵

However it was not only footballers' clothing that was experiencing radical alteration in fashion. As Green says:

"These were mere details of change. Of a far wider and deeper significance was the arrival of flood-lighting in the mid-1950's and with that the birth of European club competition which opened up a whole new horizon. Meanwhile just below the surface, the slow fuse of a time

bomb was burning, as players began to agitate for increased wages and a fresh status. Behind all this shifting scenery and the roar of the crowd lay this struggle of the individual, which was to explode dramatically at the end of the decade.

In 1946 there had been the vague threat of a strike by the Players' Union under the chairmanship of Mr Jimmy Guthrie, who in 1939 had captained Portsmouth to victory in the F.A. Cup at a time when the basic wages were £8 in the playing season and £6 in the close period of summer. By the late 1940's and throughout the 1950's there now followed a gradual advance, painfully and laboriously gained step by step, which finally led in 1961-62 to the abolition of the maximum wage and a new deal for the player. Once more a strike threat was the weapon used."³⁶

It was certainly the case that the Players' Union needed to use the threat of strike action as soon as the professional game got under way again after the conclusion of international hostilities:

"In both 1945 and 1946 threatened strikes were necessary to force wage and other concessions from the FL. Another strike threat following the FL's refusal to negotiate, led the Ministry of Labour to impose arbitration under the war emergency controls which were still in force."³⁷

It was indeed in 1947 that there was a National Arbitration Tribunal³⁸ decision which laid down an entirely new and

increased scale of wages after a dispute involving the players and the Football League had attracted government attention. The subsequent increase brought the maximum wage to £12 in the playing season and £10 in the close season. It was a notable early achievement for Jimmy Guthrie, who had taken over the Chairmanship of the Union in 1946 (see Table 1.1), and from 1948 until his dismissal in 1957 was the first chairman to sit full-time. But Guthrie was already becoming dependent - too much so according to Dabscheck³⁹ - on 'external' bodies, such as the National Arbitration Tribunal. The immediate post-war structure of the industry was undergoing certain changes which engineered such an approach, or at least made it more likely:

"After the war, too, came further requirements.

In 1948 a joint standing committee of the F.A. and the League was set up to examine common problems. In 1949 this was followed by yet another joint standing committee of the F.A., the League and the Players'

Union . . . to consider matters concerning the professional player."⁴⁰

One of these external bodies, the Ministry of Labour, which had set up the Joint Standing Committee in 1949,⁴¹ also called for the inquiry into football of 1952.⁴² This was the first of several official investigations into the football industry which were to punctuate the post war years. It came to be known, after its Chairman, John Forster, as the Forster Report, but was actually entitled "ASSOCIATION FOOTBALL: The Report of A Committee of Investigation into A Difference Regarding the Terms and Conditions of Association Football Players", and was submitted to the Ministry of Labour and National Service which had established the Committee under the Conciliation Act, 1896. The Forster Committee considered the Players' Union's proposals

to abolish wage restraint and the retain and transfer system; while describing the system as "unusual" and suggesting that the ideal rule would be 'man for man' exchanges it rejected abolition as "impracticable at the present time."⁴³ The issue of wage restraint was to be submitted to yet another external body in the following year, 1953, when the Union applied to the Industrial Disputes Tribunal,⁴⁴ the eventual decision resulting in "further increases in wages and improved conditions."⁴⁵

It was undoubtedly in this era that the momentum gathered within the hierarchy of the union to abolish, once and for all, the maximum wage restriction. With first Guthrie, then Jimmy Hill as Chairman (see Table 1.1), and Cliff Lloyd (see Table 1.2) as Secretary, as Douglas says:

"The next seven years were a continuing battle for higher wages for footballers and the abolition of the ceiling on wages. Lloyd found a useful ally in his old team mate Matt Busby, who wrote a newspaper article proposing the abolition of the maximum wage. Rumours of under-the-counter payments to players, notably (at) Sunderland where two players were suspended by the F.A., made a mockery of the present wage system, Busby pointed out. The maximum was raised that year to £17 a week, and a year later rose to £20, with League Secretary Alan Hardaker insisting that if players played better they would get more money."⁴⁶

Nevertheless, the maximum wage (not to mention the retain and transfer system) still reigned supreme in the soccer industry of the nineteen-fifties. It is perhaps worth

inquiring why such a self-confessed industrial 'militant',⁴⁷ perhaps the strongest enthusiast for the trade union movement (comparable with Meredith and Roberts of the earlier years) there has ever been within the ranks of professional footballers, failed personally to win the ultimate prize for the Union - the legendary 'freedom' from the shackles and chains of nineteenth century industrial despotism. It is ironic that Guthrie's period of service as Chairman of the Players' Union, in many ways, proved counter-productive. His powers of persuasion may have forced the union into the Trades Union Congress in 1955,⁴⁸ and rhetorical skills impressed the T.U.C. delegates,⁴⁹ but, according to Dabscheck,⁵⁰ Guthrie's 'reign' was an era when the Chairman disregarded union management committee decisions on many occasions, which led to increasing personality conflicts and a lasting legacy of bitterness.⁵¹ Shortly after Guthrie failed to win re-election as Chairman in 1957, the Secretary suggested a change of title from the Association Football Players and Trainers Union to the Professional Footballers' Association, or P.F.A. as it has come to be known. Cliff Lloyd has recalled that he:

"had no objection to the word union.

It was just that players were suspicious of trainers - they thought they carried tales to the managers - and Professional Footballers' Association abbreviated better and was more in keeping with the standing of members."⁵²

However, there is at least the trace of a swing away from a more obviously 'militant', in other words confrontational, style of trade unionism, in the switch of name (if only symbolic), and the end of Guthrie's chairmanship certainly does mark a break in the history of the Union. When Jimmy

Hill took over in 1957, having started union work as a delegate at Brentford in the early nineteen-fifties,⁵³ and according to his own account not personally antagonistic to Guthrie when he succeeded him,⁵⁴ the end of an era was at hand. Hill set his sights on gaining for the professional footballer in England "the two freedoms":

"freedom for a player to negotiate his own contract; and freedom to negotiate his own wage with his employers".⁵⁵

Such "freedoms" were for the Jimmy Hill of the late nineteen-fifties "the right of every working man in Britain".⁵⁶

Within six years, albeit in some measure, they had been attained.

THE RISE AND FALL OF THE GOLDEN AGE OF THE ENGLISH FOOTBALLER

It was not just the abortive struggles of the Players' Union against club, Football Association and League which mark the formation of the 'footballer as legal subject' in the period 1918-1960, but another terrain - that of the 'discursive'. The work and social relations of the industry did not, in any simple, deterministic way, give rise to the imminent legal changes in the status of professional footballers in England. What is also important is the way in which players are 'conceived' in official reports, legal cases and regulations, sports journalism, football match programmes and studies, not to mention in 'popular' culture on the terraces and in the stands, in schools, offices, pubs, clubs, factories, streets and homes. The creation of the legal position of the professional footballer, of footballers' 'rights' in other words, is inextricably linked to the way in which footballers are spoken of and written about, today as well as yesterday.

James Walvin, in discussing "bad" behaviour on the football field in the inter-war years points out that:

"Commentators with short memories however considered such scenes to be a new sign of the inevitable decay induced by money (as of course they still do)."⁵⁷

Nostalgia, of course, has many varied social functions,⁵⁸ but specifically in the case of sport, and even more especially, professional football, its effects are pernicious. That is not to say that there are not, and cannot be, genuine⁵⁹ discussions and arguments about whether football and footballers in England were REALLY better in the 1920's, 1930's, 1940's and 1950's than in the 1960's, 1970's and 1980's. But the operation of various discourses about football, journalistic, historical and sociological in particular, 'fix' the pre-1960's professional footballer in a Golden Age, located in diverse positions within the period 1918-1960. The importance of this lies in the fact that football and the professional player in England are regarded as respectable prior to the abolition of the maximum wage and the modification of the retain and transfer system in the early nineteen-sixties; after the largely symbolic alteration in work relations in the industry - as will be detailed in Chapter 4 - the footballer in England is seen, increasingly, as 'overpaid', 'greedy', 'ungrateful', even 'unpatriotic', all by reference to the deferential pre-maximum wage player. Those social scientists who have a tendency towards 'romanticism' in their analysis of the 'people's game' (somewhat ironically since they tend to pledge implicit support for the modern players as employees)⁶⁰ are particularly guilty of this. Triesman, for instance, in contrasting the class origins of the directors of football clubs and the administrators of the game with those of the players explicitly chooses to recall from the 'fifties the memory of maximum wage players, such as Nat Lofthouse:

"a player who . . . had been a Bevin boy in the last war, a coal pit face worker conscripted for work in the mines rather than military service. Lofthouse, like so many other footballers came off the terraces, the son of a coal man, and he went into first-class football on a £1-10s-0d weekly wages."⁶¹

Whether consciously practised or not this kind of nostalgic looking back⁶² to a bygone era when players possessed impeccable manual working class credentials is inclined to be seriously misleading. It blinds us to the professional player's actual conditions of employment over nearly a century, because it operates as part of a mythology which suggests that a certain era was the zenith of the professional game in England when players were deferential workers and (at least in the 1950's) the 'age of affluence' was alive and well. The fact that this era was prior to the struggles which eventually abolished the maximum wage is crucial to the success of such a mythical view of 'soccer in the fifties', or for that matter in the 'twenties , 'thirties , or 'forties .

This view of the player as manual worker - taken to extremes almost a 'workerist' view reminiscent of the Stalinist period in the Soviet Union, celebrating the 'proletarian' physical culture of the industrial worker - is also inaccurate in other ways. Despite an early twentieth century ruling that a "professional footballer was a manual labourer",⁶³ the player has never been an employee "in any conventional sense", to echo Taylor's confused notion of the "soccer consciousness" of the 1920's-1940's. As Hopcraft has said of one of the major players of the 1930's who became the outstanding manager of the 1950's, Stan Cullis:

"He had moved out of the rigid oppressiveness of his class through his gifts in the people's art. The essence of the people's obsession with football was that it was far, far better than work."⁶⁴

Shorn of its romanticism, this quote is an apt summary of the professional footballer's position; a worker, yet not a worker, and it could also be said, 'free' yet not 'free', 'legal' yet not 'legal'. It was indeed legal discourse in particular which was to be the battlefield of the 1960's, 1970's and 1980's for player's rights, responsibilities and aspirations. The difference, however, was that England no longer dominated the Empire, and the World, as it had previously done and the corresponding hegemony of the F.A.⁶⁵ was being challenged on all sides. The professional football player was, not for the first time, to be the natural scapegoat.

REFERENCES

1. Stan Matthews: FEET FIRST AGAIN (Corgi, 1955), pages 47-48.
2. for a modern interpretation of this question see S.W. Gamble: "A Study of Unionisation: The P.F.A. in the English Football League"(Dabscheck, op. cit., page 253 cites this as a MSc project at the Department of Industrial Relations, London School of Economics, 1973. However, no copy of the work exists in public outside the student's possession).
3. in Cohen, op.cit., and Dunning (ed), op. cit.
4. Cohen,ibid, page 147.
5. in Hargreaves (ed),op. cit.
6. Eric Dunning points out in his report for the SSRC/ Sports Council op. cit., that Taylor's hypothesis was "explicitly speculative and not based on research" (by which he means, presumably, 'field-work').
7. see David Frith: THE GOLDEN AGE OF CRICKET 1890-1914 (Lutterworth Press, 1978).
8. op. cit.
9. see Dabscheck, op. cit., page 243.
10. ibid., page 244.
11. ibid., page 257. n.b. its Scottish counterpart, the Scottish Professional Footballers' Association, amalgamated with the General and Municipal Workers Union in 1975; see Dabscheck, page 254.
12. op. cit., page 55.
13. Peter Douglas: THE FOOTBALL INDUSTRY (Howard House, 1974), pages 58-59.
14. The occasion of its formation was the November 1918 decision of the League to introduce a £1 per week training allowance, following the F.A.'s abolition of all wages during the war. The joint forces of the London players and the Manchester organisation

- persuaded the League to increase the allowance to £2 per week; see Dabscheck, pages 243-244.
15. *ibid.*, page 244.
 16. For instance, Chelsea players under the management of Eddie McCreadie volunteered to take a pay cut in the mid nineteen-seventies when financial bankruptcy apparently threatened the club, and it is becoming increasingly common in the 1980's.
 17. *op. cit.*, page 245.
 18. *op. cit.*, page 129.
 19. *ibid.*, page 129. See also Geoff Pearson: *HOOLIGAN: A History of Respectable Fears* (Macmillan, 1983), pages 29-31 in particular, for brief comments on football 'misbehaviour' on and off the field in the 1920's and 1930's.
 20. see Dabscheck, *op. cit.*, page 245.
 21. Dougan and Young, *op. cit.*, page 61.
 22. Dabscheck, *op. cit.*, page 246.
 23. *ibid.*, page 246.
 24. Dougan and Young, *op. cit.*, page 62.
 25. *ibid.*, pages 61-62.
 26. *ibid.*, page 62.
 27. for instance, see Dougan and Young, *op. cit.*, page 62 and Dabscheck, *op. cit.*, page 246.
 28. Dougan and Young *op. cit.*, page 62.
 29. Dabscheck, *op. cit.*, page 246.
 30. *ibid.*, page 245.
 31. *ibid.*, page 245.
 32. Jimmy Guthrie (with Dave Caldwell): *SOCCER REBEL: The Evolution of The Professional Footballer* (Pentagon, 1976), page 40. Guthrie also cynically describes Fay as a "practising Roman Catholic and a devoted Conservative."

33. *ibid.*, pages 40-41, and Dabscheck, *op. cit.*, page 246. Sammy Crooks, Chairman of the Union at this point (see Table 1.1), also helped to "keep it going during the last war", see Michael Carey's obituary: "Crooks - The Gifted Winger" in *The DAILY TELEGRAPH*, February 5th, 1981.
34. Stan and Mila Matthews: *BACK IN TOUCH: An Autobiography* (Arthur Barker, 1981), page 40.
35. *THERE'S ONLY ONE UNITED: The Official Centenary History of Manchester United* (Hodder and Stoughton, 1978), pages 45-6.
36. *ibid.*, page 46. Green also gives the following table of wages:
- | YEAR | PLAYING SEASON | CLOSE SEASON |
|--------|----------------|--------------|
| 1946-7 | £10 | £8 |
| 1947-8 | £12 | £10 |
| 1951-2 | £14 | £10 |
| 1954-5 | £15 | £12 |
| 1957-8 | £17 | £14 |
| 1958-9 | £20 | £17 |
37. Dabscheck, *op. cit.*, page 247.
38. Award no. 942.
39. *op. cit.*, page 247.
40. Geoffrey Green: *SOCCER IN THE FIFTIES*, (Ian Allan, 1974), page 174. The N.A.T. of April 11th, 1947 had concluded that there was a "need for the establishment of some form of authoritative joint machinery of negotiation for the profession , preferably on the lines of a Whitley Council."
41. see Dabscheck, *op. cit.*, page 247.
42. *ibid.*, page 247. It was also in the early 1950's that Colombia tempted leading British players to Bogata, offering payments well above the maximum wage current in England and Wales at that time.

43. Quoted in Witty, op. cit., page 284.
44. Award no. 399, July 1953, Chairman Lord Terrington.
45. Guthrie, op. cit., page 62.
46. op. cit., page 59.
47. see Guthrie, op. cit., passim.
48. See Dabscheck, op. cit., page 247 and Guthrie, ibid., pages 69-73.
49. Guthrie, ibid., pages 69-73.
50. op. cit., page 248.
51. see Danny Blanchflower's "Foreword" to Guthrie, op. cit., and Guthrie op. cit., passim. (In an interview at the P.F.A. offices in Manchester on October 28th, 1980 Cliff Lloyd insisted to me that much of Guthrie's written recollections were inaccurate).
52. John Roberts: "The Man With £1,000 - a-week Soccer Stars in His Debt" in The DAILY MAIL May 5th, 1981. .
The exact date of the name change is somewhat controversial; Dougan and Young cite the year 1961, while Dabscheck has 1958, both having used P.U. records. As far as it is possible to ascertain from the records, the 1958 date is more accurate. Indeed Andrew Ward and Ian Alister, in their pioneering oral history of Barnsley F.C. in the 1950's op. cit., give an exact date, 18th April 1958; see page 118.
53. Jimmy Hill: STRIKING FOR SOCCER, op. cit., page 13.
54. ibid., page 13-14.
55. ibid., page 39.
56. ibid., page 39.
57. op. cit., page 129. For an excellent contemporary illustration of this principle, see Jeff Powell: "Blame The Money!" in ^{The} DAILY MAIL September 11th, 1981 who accords with the newly elected Chairman of the Football Association, Bert Millichip, (see Table 3.1 (b)) in citing the payment of players by the

F.A. when representing England in international matches as the reason for apparently 'ignominious' defeats such as that by Norway in a World Cup qualifying match on 9th September 1981. It hardly needs to be added that 'unsportsman-like' behaviour on the pitch as well as national sporting failure is still frequently perceived to come from the same evil root.

58. see Pearson: HOOLIGAN: A History of Respectable Fears, op. cit., for an incisive analysis of nostalgia about 'hooliganism' and 'pre-hooligan' days.
59. For instance, Nick Walsh: DIXIE DEAN: The Life Story of a Goal Scoring Legend (Macdonald and Jane's, 1977) makes out a well argued case, both statistical and impressionistic, for holding Dean in greater esteem than any other centre forward (or "striker" to use a more contemporary term) in the history of the professional game in England. However, any 'scientific' comparisons of eras are virtually impossible given the changes in footwear, clothing and, especially, footballs, to say nothing of TV's action replays, etc.
60. e.g. David Triesman: "Football in Decline" in MARXISM TODAY March, 1981.
61. in "Introduction" to Vinnai, op. cit., page 11.
62. For all its other journalistic merits, Arthur Hopcraft: THE FOOTBALL MAN: People and Passions in Soccer (Penguin, 1971) also falls into this trap, particularly in discussing Stanley Matthews (page 30) and, curiously again, Nat Lofthouse (page 32).
63. Dougan and Young, op. cit., page 59 note that the union had managed to persuade the Inland Revenue of this 1906 ruling so that players were eligible for benefits under the National Health Insurance.
64. Hopcraft, op. cit., page 25.
65. see on this in the pre-1939 period, Walvin op. cit., pages 121-126.

CHAPTER 4: FROM SLAVERY INTO FREEDOM

"The continuance of this relation demands that the owner of the labour-power should sell it only for a definite period, for if he were to sell it rump and stump, once for all, he would be selling himself, converting himself from a free man into a slave, from an owner of a commodity into a commodity."¹

It is said that the early 1960's in English soccer were something of a watershed. Jimmy Hill, the leader of the players' organisation at the time, put forward this view in his early autobiography STRIKING FOR SOCCER:

"I would like to say this in a general way to all chairmen and directors of football clubs in England. I think if there is a general fault on your side it is that you tend to live in the age of the Industrial Revolution, with a master-and-man attitude. Some of you are beginning to realise that that age is over; even if it were not, it is difficult to treat professional footballers as one does ordinary employees."²

For recent popular memory and much mass media discourse about football the years of 1961, when the maximum wage was abolished, and 1963, when a high court action by George Eastham against Newcastle United Football Club brought a judicial declaration that the retain and transfer system was illegal, seem to signify a qualitatively new and distinct era in professional soccer. 'Slavery' had been replaced by 'freedom'; at a stroke, or perhaps two strokes, the great twin shackles of wage restriction and retention clauses had apparently been severed. A "football

revolution" had occurred according to academic commentators such as Professor George Keeton³, and middle-brow journalists like Hunter Davies⁴ could legitimately spend a year observing the new 'bourgeois' footballers of Tottenham Hotspur. The footballers of the 1950's and beyond were long gone. Or so the story goes.

However, there is another, more adequate, version of events to be found in the history of the campaigns for improving players' rights in this period and, particularly, the role of the Professional Footballers' Association (P.F.A.) which, as we have seen, has a longer, more chequered history as the Players' Union (until 1958) dating back to the days of Billy Meredith in 1907. It may well be true, as another ex-player Fred Eyre has claimed, that "since the days when Fulham's inside forward Jimmy Hill led the players out of . . . poverty to guzzle milk and honey in the promised land, the footballer is looked upon in a different light by the supporter,"⁵ but many professionals (part and full-time) in the days of the millionaire superstars like Keegan and Francis earn paltry wages and are subjected to disciplinary regimes which would make most supporters revolt on the spot.

This part of the study examines the fate of the players' campaigns for better conditions, in and outside 'work', as they come up against the most serious economic recession in the industry, and the country, since the 1930's. It analyses how such campaigns came under attack as one of the causes of the decline in the fortunes of professional soccer, and reviews the current state of industrial relations in the game.

The late nineteen-fifties and early nineteen-sixties witnessed what in some ways was the football industry's successful assertion of trade union power on behalf of the players. This Chapter documents the events surrounding

the abolition of the maximum wage and the modern moves towards players' freedom of contract and considers the extent to which these were symbolic breakthroughs rather than fundamental changes in the legal and social status of professional footballers.

The bare facts of the case are straightforward enough. The first bastion of the paternalistic, private power of the football industry to fall was the maximum wage. The legal limit on footballers' pay was finally abolished in January 1961 after a strike threat by the then Chairman of the P.F.A., Jimmy Hill. A personal intervention by the Conservative government's Minister of Labour, John Hare, apparently secured agreement between the participants.⁶ The maximum wage was then £20 in the playing season of 36 weeks and £17 in the summer, not taking into account League bonuses.⁷ Its abolition was viewed as an event of some significance. As Martin Tyler recalls:

"The abolition of the maximum wage in 1961 . . . brought the whole question of the status of the professional footballer into the public arena and was perhaps the single most important event of the whole period."⁸

Undoubtedly the Union under Jimmy Hill had, after all that had gone before achieved a considerable gain. There was no longer to be singled out for legal control the contract of employment of a particular section of employees, though, of course, professional footballers' wages were still, technically, to be subject to statutory wage limits of various governments along with the nation's other waged and salaried workers. It had taken advantage of the impetus created by George Eastham's dispute (on a matter other than wages) with Newcastle United Football Club. However, the victory over the maximum wage issue, achieved

without a withdrawal of labour occurring,⁹ actually served to focus attention AWAY from the other burning issue of the day, namely the professional footballers' freedom of contract, which was resolved in a rather less satisfactory manner.

It is on the question of what is widely referred to as freedom of contract - the ability of the player to move freely between employers - that the players' trade union has most frequently come into conflict with the F.A. and the F.L., ever since its abortive origins in the distant days of the 1890's. Even in the present day, the situation has not yet been clarified after nearly a century of argument. Players' freedom of contract is perhaps the most widely publicised, and in some instances misunderstood, aspect of the work relations of the football industry. Its essence is, in fact, twofold: firstly, there is the 'retention' system, which under the agreement finally concluded in 1978¹⁰ has been substantially modified, and secondly, there is the 'transfer' system which remains, as yet, unaltered, and is of dubious legality.¹¹

THE MODERN CAMPAIGNS FOR THE TWO FREEDOMS

The retention part of the retain and transfer system has, over the years, received most of the scrutiny, but until the 1978 settlement the two issues have really been inseparable. As for the transfer system as a whole it has been confidently asserted by J.R. Witty that it is not wrong in itself, but that it is "the abuse of the system which caused controversy and bitterness."¹² Ever since the KINGABY v. ASTON VILLA FOOTBALL CLUB case in 1912 the union has been concerned to question the system's validity, and "(s)everal times subsequently, for example, in 1920 and 1933 the Union asked the League to reconsider the transfer rules, but each time the Management Committee

declined to open any controversial discussions on the subject."¹³ Witty's interpretation of the transfer system is clearly coloured by his (mis)understanding of the ratio of the KINGABY case, for he claimed that the "principle of that which many people disliked intensely and which, even today, is a sore point with the Players' Union was declared good in law."¹⁴ The Union had consistently taken a different line, but nevertheless, even in the nineteen-eighties tends to maintain the view that the "transfer system will ALWAYS be there in football for players DURING their contracts",¹⁵ thus seemingly accepting its inevitability.

In part the modern history of the movement for players' freedom of contract is reasonably well documented.¹⁶ There have been a number of investigations, of an official and juridic nature, which have considered the system of industrial relations in the football business and in particular the question of retain and transfer. The Chester Report,¹⁷ for instance, firmly recommended the abolition of the retention and transfer of players. The Commission on Industrial Relations¹⁸ (the C.I.R.) however took a "less firm line" than the Chester Committee indicating "a theoretical preference for fixed-term contracts - that is to say 'freedom' - but other possibilities were advanced."¹⁹ The system of retain and transfer would have been duly abolished by the time of the C.I.R.'s deliberations, if the Chester Report had been implemented. But whereas the 1968 Committee strongly recommended the substitution of fixed-term contracts for the usual 'one year and one year option at the club's discretion', the C.I.R., whilst sympathising with total abolition, suggested a number of reforms and encouraged negotiation. It recommended pragmatically, that:

"The precise changes that should take place must be for the parties to decide."²⁰

Nevertheless, the C.I.R. did recognise the centrality of the contract issue in the work relations of the industry. The framework of the employment relationship was still seen, in 1974, as the major legal problem, requiring some form of resolution.

In the courts, however, there had been much more significant progress. Jimmy Guthrie reveals in his book²¹ that during the nineteen-fifties at least two cases - the disputes involving Frank Brennan of Newcastle United and Ralph Banks of Aldershot - could have come to court involving the retain and transfer system as being in 'unreasonable restraint of trade'. In the event, Brennan retired from professional football in disgust and Banks was given a free transfer by his club, though counsel's²² opinion was taken in the latter case and predicted the kind of favourable legal result for the players which was finally achieved in 1963. The bald circumstances of the eventually successful court action²³ in that year involving George Eastham and (again) Newcastle United, were that, as Douglas has noted:

"Eastham, a player with Newcastle United, brought a test case against his club and refused to re-sign for them when they rejected his request for a transfer. He was backed by the P.F.A. and eventually in July 1963 Mr Justice Wilberforce in the High Court declared that the rules of the F.A. and League relating to the retention and transfer for professional footballers were 'in unreasonable restraint of trade'. Eastham won his case . . ."²⁴

However, various interpretations of the effect of the case prevail. George Keeton for instance, has argued that:

"The decision in this case for practical purposes ended the old retain-and-transfer system which, it may be suggested, had become out of harmony with changing conceptions of the proper relationships between employer and employees . . . The transfer system remains one of the corner-stones of the professional game, and the club still exercise an option to renew the agreement for one or more years. A club may exercise such an option in respect of a player whose registration they wish to transfer . . ."²⁵

The judge in the case, Mr Justice Wilberforce, certainly did reach the conclusion that the "legitimate interests of the Association, the League and the employing club cannot justify (the retention system) in its present form,"²⁶ and the arrangements for renewing a player's contract were undoubtedly affected, but the magnitude of the judgement needs to be carefully assessed. Douglas has summarised the situation prior to the Eastham case:

"Before 1963 a player registered with a club could find himself at the end of his contract period in one of four situations. His contract was renewed - fine if he could negotiate satisfactory terms and conditions for himself. Or he could be retained by his club - even at a wage lower than his existing wage (i.e. a first team player who is getting on but the club thought he would be useful to them in the reserves). If the player

refused to accept the new deal and no other club was prepared to buy him . . . the player could be retained immediately by the holding club, neither under contract nor allowed to sign for another club, clearly an iniquitous situation.

The third course of action was for the player to be placed on the transfer list and the holding club was under no obligation at this stage to continue paying him wages. If however, he accepted the minimum wage, he could not sign for a non-league club. If he was not paid, he could join such a club - tantamount to quitting the professional game altogether.

If none of these situations arose the player was free to leave of his own accord."²⁷

Clearly the post-Eastham situation was an improvement but the 'unilateral option clause', allowing the club to retain a player's services AFTER the end of the contract, although, with no entitlement to stay.²⁸ was still a massive limitation of the 'freedom of contract' of the professional footballer. The club still retained the player's registration in the post-Eastham era. 'Freedom of contract' was not, in fact, substantially, brought any closer by the Wilberforce J. judgement, though an Independent Appeals Tribunal²⁹ was later set up to hear players' appeals against terms offered them by their clubs at the end of their contract.

The impetus which brought about the abolition of the maximum wage, under threat of strike action, in 1961, had clearly been lost. However, in 1967 the Union won an important concession in the form of the 'transfer levy' of

10%, of which 5% went to the Players' Provident Fund.³⁰ A 'package deal' in 1969 which stopped short of abolition of the retain and transfer system, although accepted by the National Negotiating Committee (N.N.C.) of the football industry, was rejected by the Football League's member clubs. However, after the C.I.R. Report in 1974 the movement towards the 1978 agreement gathered pace.³¹ The players strike threat helped to secure a 'new deal' and eventually:

"towards the end of the 1977-8 season, the League accepted a qualified form of contract, but failed to accept a system by which a club could be compensated with a multiplying factor which indicated a player's age, divisional status and experience when he moved on."³²

Here, then is the summit of the 'legalisation' process to date which produced the professional footballer of the 1980's a century after the original act of legislation of professionalism by the F.A. in 1885. However, this is only a partial account. The real significance of the 'evolution',³³ of the professional footballer as legal subject is manifestly not given in the empiricist and teleological histories which suggest a movement from 'illegality' prior to 1885, and progressively increasing 'legality' afterwards, with a full liberation in the late nineteen-seventies and early nineteen-eighties. A much more in-depth analysis of the campaigns for the "two freedoms" is essential if such simplistic notions are to be combated.

If we consider the first of the "two freedoms" to be achieved, namely the maximum wage, it is clear that the debate is far from over, even twenty years after the original act of abolition had been carried out. For

instance, former Football League Secretary, Alan Hardaker (see Table 2.2) continued to decry the removal of the maximum wage in the latter years of his term of office³⁴ despite the fact that he had been secretary in 1961 and therefore party to abolition!! In recent seasons, also, a number of managers,³⁵ especially those whose jobs have allegedly been made more hazardous by players' wage claims, have called for the reinstatement of a legal, maximum wage limit. Indeed some managers have gone further and arbitrarily introduced a maximum wage. For instance, in the 1981/2 season:

"Tommy Docherty . . . introduced a maximum wage at Preston of £250 per week on the basic salary . . . irrespective of how famous the player . . ."³⁶

The immediate context of such action is the misleading focus of the mass media on the players in the 'superstar' or even 'megastar' bracket. However, the effect of media discourse is such that all players are branded with the same 'greedy' stigma. Witness one such press article:

"Players who are earning more money than they know how to spend, and the fat-cat agents who live off them had better start selling their stocks and shares . . . soccer is heading back to the 1950's . . . it is surely now inevitable that, hopefully sooner than later, soccer will reintroduce some sort of maximum wage."³⁷

It is professional players in general who are blamed:

"Players can no longer wring their hands and claim that whatever is wrong with the game it has nothing to do with them.

The truth is that too many players,
for too long, have been allowed to bleed
soccer dry."³⁸

The professional footballers interviewed as part of the field-work for this thesis overwhelmingly rejected such a view - though they did condemn one or two of the 'super-stars' - and were of the opinion that freedom of contract in its present, limited form and the abolition of the maximum wage were not the reasons for football's contemporary ills. It was not just ~~that~~ they denied personal responsibility for the crises within the sport - they were in fact quite prepared to admit fault where, in their view, it was due - but, especially in the case of the media presentation of players' wage demands, they perceived a distortion, rather than a revelation of truth.³⁹

All this is not to argue that a maximum wage, of some sort⁴⁰ should not be considered. It may well be that as part of a general political strategy a "maximum income limit would be the most important step towards a general narrowing of inequality of incomes and raising low wages and benefits."⁴¹ But various media campaigns around wages for footballers (which, of course, in the case of a very small minority of well known, usually international, players, includes various personal appearance, advertising, TV and even film contracts OUTSIDE football altogether) are grossly unrepresentative if they gloss over the fact~~that~~: (a) apprentice professionals "are still subject to a maximum wage under League rules,"⁴² and (b) the vast majority of League professionals, even in the nineteen-eighties are not highly, and in many cases,⁴³ not even relatively 'well paid'. Occasionally, amongst the hysterical 'moral panics' generated by the mass media in successive years since the abolition of the maximum wage, there are more realistic

accounts, one of which pointed to the press irresponsibility in such cases:

"At the end of last football season, tales of major unemployment for players were rife with clubs expected to cut back their staffs dramatically in the light of the economic situation. It has continued to provide a useful refrain for some managers, one of them recently saying that 'greedy players at the top end are holding clubs to ransom and causing the 20 per cent unemployment below'.

In fact, the figures tell a different story. The number of players given free transfers at the end of last season was 357, an increase of 27 over the May 1980 figures. 'I don't think the situation is nearly as bad as was suggested,' said the Professional Footballers' Association Secretary, Cliff Lloyd.

His assistant, Gordon Taylor, concurs: 'Around, 150-200 have been fixed up', he said, 'and quite a large number have also gone into non-league football where, if they can get a job as well, they are actually better off.' "⁴⁴

What is at stake then here is not so much the accuracy or inaccuracy of the widely propagated view that the abolition of the maximum wage of professional footballers is the reason for soccer's general economic plight, but the social⁴⁵ construction of the 'player as greedy' after 1961 as compared with the player as, to some extent, worker-hero (see Chapter 3) prior to that date. In that

sense the campaigns for the abolition of the maximum wage before 1961 have been less significant than the campaign for its restoration ever since.

The campaigns against the players' claim for freedom of contract, however, have been considerably more complicated, and in many ways more successful than the mobilisation of opinion in favour of maximum wage limitations for players.

Part of the problem is that the 1963 court case did not necessarily⁴⁶ represent the significant victory which was, and still is,⁴⁷ claimed for it. As former P.F.A. Chairman Alan Gowling has argued, the Eastham case "ended another area of conflict, but the freedom-of-contract problem remained".⁴⁸ Or, as Dabscheck has pointed out, granting the magnitude of the case, but counselling caution in interpretation:

"In 1963 the P.F.A. achieved a major victory in the courts when in the Eastham case the retain-and-transfer system was found to be an unreasonable restraint of trade. Despite their victory in the legal battle the P.F.A. subsequently lost the peace. Although the P.F.A. gained some not insignificant concessions in the negotiations - independent arbitration of salary disputes, payment of last season's contract provisions during the dispute, free-agency status for players not offered the same terms as last season, the inclusion of an option clause in contracts - the clubs still had power to decide whether or not they would retain or transfer a player. All the P.F.A. gained from the Eastham case was to make the retain-and transfer system less objectionable, without confronting the issue of labour market controls PER SE."⁴⁹

However, one of the reasons for the limited real value of the Eastham court action (its 'symbolic' importance is perhaps another matter) was the subsequent obstacle course set out by various individuals and bodies to block the footballer's 'road to freedom'.⁵⁰ Media discourse, again, has had its effect. A fairly consistent, and at times, vitriolic press campaign surrounded the P.F.A. attempts to implement the C.I.R.'s recommendations, in 1974, which after all were less far-reaching than the official government report by the Chester Committee in 1968. Some newspaper accounts were simply cavalier. The News of the World, for instance, noted that:

"As the freedom bandwagon gathers pace, some of the game's most affluent performers are clambering aboard. But they take with them a few nagging, genuine worries about the plight of football's smaller fry."⁵¹

The same news feature, as well as presenting the views of some of these "affluent performers" in favour of the "right to move from job to job like any other worker", highlighted (and in fact headlined) the then Football League Secretary, Alan Hardaker's view, that if "the right decision isn't arrived at, professional football as we know it will disappear within 10 years", couched as a deliberate warning to players' 'freedom' claims; and also a token manager,⁵² Jack Charlton (then of Middlesbrough) stating that "freedom of contract will ^{be} like selling the soul of a club... You develop kids from the age of 15 and you invest a lot of time and money in them . . . the prospect of freedom of contract frightens the life out of me . . ." Other managers and administrators were quoted elsewhere⁵³ citing the 'freedom of contract' claim as the straw which would break the football industry's back. This is not to suggest in

any way a conspiracy theory of explanation of media discourse. Across the spectrum of English national newspapers in the period, particularly, between 1974 and the eventual agreement in 1978, a variety of views were presented on the freedom of contract issue. Brian Glanville,⁵⁴ for example, whilst warning the League to negotiate, since the "present contract, known to be against public policy and in restraint of trade, can hardly survive much longer" expressed the view that there were "fallacies in the arguments put forward both by our clubs and our players,"⁵⁵ setting out in the process some pertinent questions about the contractual issue in the context of the football industry in the mid 1970's in England. But even the 'quality' press seemed to regard the players' demands as less 'rational' than the administrators' suspicion of them. For example, in a piece subheaded 'Proposal for new system of contract sure to send some more shivers through club boardrooms', Times reporter Gerry Harrison, argued that:

" . . . the climate for these proposals is wrong. The game is struggling not to make ends meet but to survive. One elder statesman described professional football as 'the country's biggest subsidised business. None of us can survive on the turnstile takings these days . . . the players want to take more money out of the game than they are putting into it. And public sympathy, is certainly not with them now!

The freedom of contract proposals are already having a harmful effect, some clubs feel, on their day-to-day existence. Money has always been borrowed on the strength of the value of a club's biggest asset, its players. But since the banks

have been aware of the forthcoming innovations, they have doubted the credit of players and slammed the door on some loans."⁵⁶

Harrison concluded the article with a quotation from a "well known negotiator who has served the game on both sides of the fence" who claimed that if "'the players and their association had wanted to find something to put clubs out of business, they could not have chosen a better moment or a better system'". Almost as an afterthought, to redress the balance of the piece, Cliff Lloyd, then P.F.A. Secretary, was quoted as saying:

"We wanted complete freedom. But bearing in mind the financial problems of many clubs this could have been a very difficult thing to achieve."⁵⁷

and Derek Dougan, then P.F.A. Chairman, as stating:

"I regard this as a greater step forward for soccer than the abolition of the maximum wage."⁵⁸

It would be possible to replicate such examples of media discourse about freedom of contract, many times over, not only from the last decade, but also from the period immediately following earlier 'agreement',⁵⁹ on the "two freedoms" in January 1961. The consistent thread in the modern press and other mass media discourse is, firstly, the suspicion - usually expressed through quotations from 'representatives' of the industry such as manager, directors, - that players' demands would bring the game to an end, and secondly, that the 'slavery',⁶⁰ contract was being or had been abolished, henceforth liberating players from the 'illegalities' and injustice of the previous era. A significant difference in the press accounts of the early nineteen-sixties, when there was a vocal, visible, 'popular'

support⁶¹ for the players' "two freedoms" demands was the apparent journalistic approval of the P.F.A. claims and consequent berating of the Football League's "betrayal"⁶² of the January 1961 agreement. But the almost universal media treatment of the 'old' restrictive contract conditions as having passed away has, misleadingly, designated the contemporary footballer as a 'free' subject untied from the chains of yesteryear.

However, the issue of the retain and transfer system and its current modifications cannot be dismissed so easily. When Billy Bremner (then of Leeds United and Scotland) claimed that to "a certain extent, football is still like white slavery"⁶³ he was widely condemned (particularly in press comment) as: firstly, a 'greedy' player who was already overpaid, but yet wanted more rewards, and was therefore ungrateful; and secondly, perpetrating an untruth since this^{'slavery'} was an historical relic due to the changes in Football League players' conditions since 1963. However, even though not all professional players have agreed with the view that players' contractual ties represented a form of slavery,⁶⁴ the transfer system, though shorn of its restrictive retention provisions as a result of the 1978 agreement, still gives rise to the 'soccer slavery' tag. As Foster has argued:

"Despite recent moves towards supposed 'freedom of contract' for footballers there has been little fundamental change. The retention system has been replaced by a system whereby a player is free to move at the end of his contract subject to the clubs agreeing or going to independent arbitration over any transfer fee. However, the objectionable restraint - that of retaining an ex-employee's registration

to prevent him seeking employment with another club - has gone. Nevertheless, the transfer system remains, particularly for players still under contract with a club and such players provide the majority of transfers."⁶⁵

Wilberforce J., in the Eastham High court judgement,⁶⁶ made comments which suggested that "if the transfer system alone (my emphasis) had been in issue",⁶⁷ it would have been regarded as valid. In other words, only the retention part of the contract system was regarded as illegal in this particular judge's view. The legality of the transfer system alone however has not been challenged in the English courts, and since the limited 'freedom of contract' which was introduced in 1978 explicitly leaves the transfer system in being, untouched, and for the time being, unquestioned, there is a general failure on all sides to recognise, as Foster argues, that:

"The feudal and paternalistic attitude of clubs and the implied assumption that men are commodities to be bought and sold in the market place are at the root of this problem",⁶⁸

and that:

"the major problem with the organisation of the industry lies in the transfer system for this implies that the club has a financial interest in a player and a right to compensation if they transfer his services. . .

. . . Although this system may be ~~un~~objectionable in law as it does not restrain the player's freedom of movement, it nevertheless maintains the view that a club

has a financial interest in a man with whom they have no contract and this interest can only be protected ultimately by some form of monopoly and economic blackmail."⁶⁹

Such an argument has general implications for the industrial relations of the football industry since unless "no restrictions whatsoever are placed on the movement of players and transfer fees are abolished completely, the system may be held to be invalid either as an unreasonable restraint of trade or as an infringement of the right to work,"⁷⁰ and:

"If clubs continue to act as feudal employers buying and selling players as if they were serfs, they are likely to come into serious conflict with the social norms expressed in the employment legislation of the last quarter of the twentieth century."⁷¹

Specifically as far as the sport of football is concerned, there has been recognition of the need to modify the transfer system, but not so much on legal grounds as 'perceived' economic necessity. The failure of the Football League member clubs to agree to a compensation system to replace the present transfer system (the P.F.A. agreed to this in September 1977) has already been noted in this Chapter, and it is somewhat ironic to record that the agreement on such a system, similar to continental⁷² football industries, generated by the 1974-1978 discussions was scotched by a "maverick"⁷³ section of six midlands clubs led by one-time Chairman of the P.F.A. Jimmy Hill,⁷⁴ then Chairman of Coventry City. The Football League Management Committee's recommendation failed to get the necessary three-quarters majority of member clubs, so the

idea of a compensation system fell. Three years after such rejection, the P.F.A. at its Annual General Meeting in November 1981, amidst a blaze of over-optimistic publicity,⁷⁵ resolved to open up the issue anew, perceiving more favourable (that is, more serious in economic terms⁷⁶) circumstances for a compensation system. Even a 'multiplier' compensation system, based on a player's age, earnings and the status of the buying club, however,⁷⁷ though modifying the escalating payments⁷⁸ made between the clubs, would still be to some extent a form of transfer system for a player at the end of his contract and normal negotiation of a transfer fee would, in any case, operate for a player still under contract. The observations made on the dubious legality of such practices within the football industry would therefore still remain pertinent.

The modern campaign for the "two freedoms" then, though partially successful in improving the legal and social status of professional footballers in England, by no means constitutes the "football revolution"⁷⁹ which has been claimed for it. Keeton, for example, argues that:

"Some time in the early 'sixties
Association Football played by the
League clubs, especially in the first
two divisions of the Football League
became big business without ceasing
to be a game."⁸⁰

For this particular law professor, the European dimension to club competition and the abolition of the maximum wage, closely followed by, in his view, the abolition of the 'old' form of retain and transfer system were the factors which marked off 'post-revolutionary' football industry. For Keeton, ever since the removal of the maximum wage, "players have become entertainers as well as athletes",⁸¹ and the legal supervision and investigation of football

rules, particularly in the Eastham case, has ushered in a qualitatively new legal subjectivity for professional players. It has been questioned in this section whether, and in what sense such a view is tenable. What is certain is that it is a widespread myth that a totally free legal status was carved out for the footballer in the modern era.

THE BIRTH OF THE 'BOURGEOIS' FOOTBALLER

Part of such mythical discourse about the modern professional footballer in England concerns the conception of the player as middle class, or 'bourgeoisified'. This diagnosis of the social status of footballers dates primarily from the abolition of the maximum wage, with Johnny Haynes - the first player to be paid the 'magical' figure of £100 per week - in the early 1960's. From the 'Golden Age' of English soccer, Tommy Lawton's view of the contrast between his own playing days and those of the modern 'superstar', is instructive on this:

"Football carried me to many interesting places, the Kremlin and the Vatican included . . . Life outside the game saw me in the dole queue and the police court, and I experienced the doubtful company of bailiffs and debt collectors."⁸²

George Best in the late 1960's and Kevin Keegan in the 1970's were the main individual examples of the new 'bourgeois' footballer, created by the lifting of the old wage restrictions. Not only has it been argued that 'embourgeoisement',⁸³ of the working class lad in the football industry has taken place since 1961, but also that players themselves began to be recruited from a much wider social background than hitherto. This latter

point is simply not supported by the empirical evidence available⁸⁴ and the whole notion of the modern professional footballer magically transforming his social status overnight, once he has legally contracted to play soccer for payment is highly dubious.

That is not to say that some professional footballers have not become firmly (and perhaps irrerversibly) upwardly socially mobile, with certain of the attendant traits of a professional middle class life-style. As Jeff Powell writes of Bobby Moore:

"As a young man, he took no more than a distant interest in the struggle by Jimmy Hill's players' union to secure the abolition of the Football League's maximum wage . . . By the time he came of age, this working clas lad from a staunch socialist background had grown into a committed Conservative voter."⁸⁵

Further, Hunter Davies,⁸⁶ in his account of a year in the life of Tottenham Hotspur, emphasises the changing economic circumstances⁸⁷ of players from overwhelmingly manual working class backgrounds as they established themselves as modern professional footballers with one of the country's 'glamour' clubs. However, when it comes to assessment of the precise nature of the change in the players' 'culture', Davies is less sure of his ground.⁸⁸ As he comments:

"Of all the players, the only one with any real political feeling was Steve Perryman. Three altogether said they voted Labour, but Coates and Knowles, the other two did it simply because of their background, without thinking about it either way. But Perryman has very strong views on tax ('It's got to be paid')

which are different from the other players, and is against private schools. He couldn't believe that so many of the other players were Tory and planning to send their kids to fee paying schools. Several of the players were decidedly racist in their views. Most were apathetic Tories."⁸⁹

Nevertheless Davies perplexedly, it seems, acknowledges that:

"Despite the affluence of their houses, the majority still reflect their working class upbringings in their normal domestic life."⁹⁰

Ian Taylor has criticised Davies' account of Spurs' players' embourgeoisement - with some justification - as stemming from a "middlebrow" journalists' resentment about the fact that:

"upwardly-mobile football stars (with or without a few 'O' levels) are more successful (during their brief careers) at making the most of it than are journalists themselves."⁹¹

Indeed in Taylor's view, Davies':

"crude survey of players' 'social attitudes' . . . largely consists of a series of anxious queries, stemming, one suspects, from Davies' fundamental ambivalence towards these well-paid working class suburbanites."⁹²

In such journalistic discourse the modern footballer is uneasily 'placed' within the middle class, and frequently, if ambivalently, condemned for forsaking his origins. The truth, however, is somewhat stranger than this journalistic fiction.

Some sociological work in the area of social mobility of players has attempted to come to terms with the complexities of the social position of the modern professional footballer in England.⁹³ Critcher, in particular, offers a series of typologies of the modern player, as distinct from what he sees as the player as 'working class folk hero', prior to the nineteen-sixties:

"the first - TRADITIONAL/LOCATED - represents and draws on the values of a traditional respectable working-class culture in a way which becomes increasingly difficult, though not impossible, after the 'new deal'. Those benefiting from greater economic rewards may be typified as TRANSITIONAL/MOBILE, exploring the possibilities of their new freedom. As even more money becomes available to the chosen few and the game as a whole becomes more respectable, players seek and find acceptance into overtly middle-class lifestyles. INCORPORATED/EMBOURGEOISED, they become small-scale entrepreneurs, a world away from their predecessors and most of their contemporary supporters. Finally, the combination of apparently limitless remuneration and the publicity machine of the mass media nominate a handful of players as 'superstars' raised to new levels and kinds of public adulation and attention. The correct typification of such players, however, is as SUPERSTARS/DISLOCATED from any available models of style. For a while their behaviour on and off the field is a source of tension to themselves and others

before they develop a new identity as superstars/relocated into the world of show-business personalities and public celebrities; taking their places, metaphorically and sometimes literally, alongside film and television stars, members of the NOUVEAU RICHE, and the more publicity-conscious of the politicians."⁹⁴

Critcher's account has the merit at least taking seriously the complex social position of the professional footballer in the modern era, and also has some purchase on the empirical evidence. His typologies are amply exemplified by respectively, (a) Stanley Matthews (b) Bobby Charlton (c) Alan Ball and (d) George Best. But the account also suffers from what might be called the 'nostalgia effect' of Hopcraft, whom Critcher heavily draws on, and others.⁹⁵

Furthermore, the Critcher (et al) analysis still does not accurately capture the ambiguities in the situation of the professional player - the contradictory nature of his position which is compounded by legal discourse on players' contracts, discipline and so on. The problem is, in essence, that the whole debate about social mobility in general, centred around the concept of embourgeoisement, suffers from a sociological reductionism: that is, it assumes that social classes NECESSARILY find expression in certain given political and ideological forms. It is this contention which is untenable.⁹⁶ Whether the argument is that traditional working class individuals, through 'affluence', have become bourgeois,⁹⁷ or simply that working class aspirations have become heightened - and unsatisfied - in the post-war period, (and therefore that the traditional class structure remains the same),⁹⁸ a reductionist argument is at work. That is not to say that there are no general conclusions to be drawn from the

sociological debates about embourgeoisement. Goldthorpe for instance, shows in his recent study⁹⁹ that mobility between social groups had not increased in proportional terms, even though numerically a greater proportion appeared to move upwards because of the increase in service and non-manual occupations in the era since 1945. But when applying the concept and the analysis to the changes in the sociological status of professional footballers in England since 1961, there are clearly too many pitfalls for comfort.

It needs to be said that there is no necessary correlation between the increasing affluence of the player and any particular social and political attitudes. For instance, Gordon McQueen, one of Manchester United's highly salaried players joined forces with regional trade union leaders and others to welcome a special national train protest against youth unemployment when it arrived in Manchester in December 1981.¹⁰⁰ McQueen's father was about to become redundant from his factory job in Scotland, a factor the local news media mentioned in the accounts of McQueen's participation in the protest. The 'affluent' footballer argument would simply condemn McQueen to the political scrapheap, labelling him either reactionary or else merely cynical. These connections have to be specified very carefully, and the quality of empirical evidence currently available on the football industry in England is not sufficiently satisfactory to enable the precise effects of increasing affluence on the modern player to be properly assessed. One of the few researchers into the game whose participant observation work enables anything like a reasonable analysis to be made is Alan Gowling.¹⁰¹ He has pointed out faults with Critcher's account, and contends that the social distance of most¹⁰² players from supporters - which is the main relationship under scrutiny in the

sociological accounts of footballers' social mobility - is not in fact, very great. He also stresses the social mobility of the supporters themselves: they, Gowling argues, have also largely become what he calls the "new bourgeoisie". The position of the 'affluent' footballer in England, then, needs considerably more accurate specification than has been so far achieved. This is not the place to undertake such an elaborate survey but it is important to sound a warning that current sociological accounts of players' social mobility are unsatisfactory.

THE STRUCTURE OF INDUSTRIAL RELATIONS IN FOOTBALL

The frequently critical discourse about individual football players becoming 'bourgeois' also includes common diagnosis of the players' organisation as elitist,¹⁰³ because of its increasing separation from the wider trade union and labour movement. Officials of the union are sometimes castigated as self-interested,¹⁰⁴ and as if to reinforce the embourgeoisement of the player thesis the Union itself is labelled as "white collar"¹⁰⁵ and more of a staff association¹⁰⁶ than a traditional labour movement organisation. But just as the 'affluent' footballer contention is fraught with complexity,¹⁰⁷ the progress of the P.F.A. towards its historical goals has been more frequently determined by the particular position of the players' organisation in the collective bargaining and governmental structure of the football industry, than by any particular problems of social consciousness of professional players. Former Secretary of the P.F.A., Cliff Lloyd, reasons that "freedom of contract WILL come"¹⁰⁸ - a view that I have indicated in earlier parts of this study may be over-optimistic - but designated the overall problem facing the union as conditioned by the fact that it is "not negotiating with those who make the decisions"¹⁰⁹

and that the "problem is the three-quarters majority required by the Football League's constitution."¹¹⁰ This is a conclusion which remains unavoidable in any serious and realistic analysis of the industrial relations of the sport in England. This 'structural' obstacle is not reducible to, or explained by, the individual perceptions or changes in circumstances of the union's members or potential recruits.

Although there are clearly other organised bodies and institutions in the football industry apart from the Football Association, Football League and Professional Footballers' Association - for instance, the Association of Football League Referees and Linesmen (A.R.L.) and the association representing Football League Secretaries, Coaches and Managers¹¹¹ - it is the basic 'tripartite' structure which makes up the national negotiations and consultative machinery.¹¹² The official historian of the Football Association, Geoffrey Green, perceived this three-sidedness when he wrote:

"Here, then, were the three corners of a triangle - the Football Association, the Football League and the Players' Union."¹¹³

However, contrary to this view of a balanced, triangular, tripartite relationship, a more careful history of the industrial relations of the sport is now emerging. This reveals that it has most certainly been the Football Association and the Football League which have arbitrarily governed the industry, in the grand old, 19th century manner (as indicated in Chapter 2 of this study). In the post-1945 period, as in many other parts of British industry, the relations between the three 'sides' of the industry have changed somewhat, but not fundamentally. The union has been placed in an unenviable 'outsider' position as the representative of the employees, whilst the employers'

representative body (albeit split into F.A. and F.L.) has rarely, if ever, listened to the voice of the industry's workforce. Green notes that the March 1949 'tripartite' committee, consisting of F.A., League and Union, was "a strong committee on the lines of the Whitley Council as recommended in 1947 by the National Arbitration Council (sic)."¹¹⁴ However, it was not to prove strong enough. A similar comment can be made about all attempts at joint negotiation structures in the football industry in the following thirty-odd years. The subsequent structure was entitled the National Negotiating Committee (the N.N.C.) but, as the C.I.R. pointed out, by the mid-1970's it was in desperate need of resuscitation. Although changes in the post-war period have been made in the progressive direction of an increasing presence for the P.F.A. in accordance with more general industrial relations practice, the players' body is nevertheless still regarded in paternalistic fashion by the other two overlapping bodies, and consequently its presence on committees where tolerated, has, for the most part, been something of a token¹¹⁵ - until the late 1970's at least.

Indeed such industrial relations difficulties were regarded as central to the problems of professional football in the report of the C.I.R. in 1974. The structure of industrial relations in the sport, as the Commission then found it, was reviewed, together with its development through turbulent times - for instance, the players' threatened strike action in 1961. The emergence of the N.N.C., comprising as it did representatives of the Football League and P.F.A. and an independent chairman, was seen as central to that structure. Despite emphasising that relations were then unsatisfactory, at club level and between representative bodies, the Commission said that "in essence the principles to be followed in establishing

good relations in professional football are the same, as those that might be applied in any industry where improvements are sought."¹¹⁶ The imperfect system of the early 1970's was seen as a foundation upon which to build a new workable system. The C.I.R. suggested that the N.N.C. remain the negotiating body, keeping talks, at least formally, between the Football League and P.F.A. with revision of its constitution to allow arbitration as a last resort. The parties were recommended to commit themselves publicly to breathing life into a body which had been convened only twice between 1969 and 1974, and to concern themselves with all matters relating to players' terms and conditions of employment and procedural issues. A specialist industrial relations sub-committee of the F.L.M.C. was envisaged as the body to perform the negotiations with the P.F.A.

In addition, a new consultative organ was recommended - the Professional Football Consultative Committee (P.F.C.C.) - as another level in the structure of the game's industrial relations. The C.I.R. envisaged it meeting every six months, discussing any questions concerning the playing of football, the employment of professional players and the organisation of the game or the parties. The F.A. Committee of study was urged to create the body, which it duly did; the idea was that it would comprise representatives of diverse interests from the F.A. to the P.F.A., including the A.R.L. and the Minister of Sport.¹¹⁷ To complete the proposed regenerated and elaborated structure, there were recommended area advisory councils enabling club directors, managers and secretaries to discuss, at least bi-annually, any matter concerned with professional football, particularly proceedings of the proposed P.F.C.C. and the rejuvenated N.N.C. On the players' side, regional P.F.A. meetings would perform a similar function in the view of the C.I.R.

Finally, the P.F.A. was urged to improve communication amongst its members by producing a regular journal.¹¹⁸

Following these recommendations in 1974,¹¹⁹ the revamped negotiating committee between Football League and union, restyled the Professional Football Negotiating Committee (P.F.N.C.) and set up in 1975 has met regularly,¹²⁰ comprising three Football League and three P.F.A. representatives, with an 'independent' Chairman and joint secretaries, and it was this body which, after consultation with the Football Association and F.L.S.M.A. was responsible for the 'agreement' on freedom of contract in 1978. This settlement, of course, represented the classic example of League club Chairmen yet again subverting the negotiating structure, although in a way which is entirely in accord with the Football League's constitution.

However, though the C.I.R. Report has had some marginal effects on the football industry, the most thorough-going analysis of the relationships within the sport (along with its many practical recommendations), the Chester Report of 1968, has fallen on stoney ground.¹²¹ Indeed, it would not be too much to claim that the proliferation of official reports on the football industry since the Second World War has served to legitimate the status quo in the social relations of the game, and has had the added effect of outlawing the more radical claims to fuller legal recognition of the professional footballer.¹²² There have been a number of investigations in the post-1945 period, five of which could be said to be characterised by their national scope and 'serious' analysis. The C.I.R., Chester, plus two Political and Economic Planning Reports¹²³ (P.E.P.) and the Forster Report¹²⁴ constitute an astonishing amount of "official discourse" with remarkably little effect in terms of social change. It might be pertinently asked why such official discourse has been, generally, so

ineffective and, where it implies or directs changes of a progressive nature, has so frequently been ignored.¹²⁵ Burton and Carlen's OFFICIAL DISCOURSE¹²⁶ represents one, ultimately unsatisfactory,¹²⁷ attempt to come to grips with the "deconstruction"¹²⁸ of judicial and official discourse, particularly in the fields of "the administration of law and the maintenance of public order."¹²⁹ Textual analysis is clearly important and there are many lessons to be learnt from such reading of official texts which has already been undertaken. Undoubtedly:

"discourse analysis has an important part to play in furthering critical empirical investigations into law and legal ideology",¹³⁰

but it is also crucial not to overestimate the simplicity of the answers to questions like 'why is a report ignored?'. In the case of the football industry, as I have demonstrated throughout this thesis, private vested interests at the top of the hierarchy hold supreme authority, and there is a willingness to allow and indeed encourage numerous reports and investigations, but not to act upon recommendations.¹³¹ Thus a plausible hypothesis is that the Chester Report, for instance, was simply out of line with the dominant view on retain and transfer restrictions held by the clubs, managers and footballing authorities. Mere discourse is clearly not enough. Actions often speak louder than words, where football is concerned.

Although the place of the professional footballer in England is peculiar - something which has been emphasised throughout this study - there is a wider, professional team sports context which must be considered. Just as it has been argued that there was a REVOLUTION in the football industry in the nineteen-sixties, some have contended, perhaps with more justification, that a similar

process in the 1970's provides a watershed in the relationships of international cricket. Bob Willis, England's test captain, for instance, in an account which he entitled THE CRICKET REVOLUTION, viewed the 'Packer Affair' in this light:

"The money improved, but just as importantly he helped to slacken the grip of established cricket on the players. For too long, there has been a master-serf relationship in cricket. Now with Packer challenging certain established doctrines, the game's administrators had to rethink their attitude. That transition had been easier in England, where the Players' Union, the Cricketers Association, had been establishing a working relationship with the T.C.C.B. throughout the decade - indeed the Association played a leading part in mapping out a peace formula between Packer and the Establishment. Packer helped to liberate players from their shackles: for good or ill , men like Barry Wood considered taking the T.C.C.B. to court for a restraint of trade action when he was banned for a time on moving from Lancashire to Derbyshire and Younis Ahmed took Surrey to an industrial tribunal alleging unfair dismissal. All that was a far cry from the days when I had to kick my heels in Warwickshire's 2nd XI for months in 1972 after leaving Surrey, with never a thought of a chance of redress."¹³²

Despite Willis' avowed traditionalism he clearly regards the intervention in 1977 of Australian business magnate, Kerry Packer,¹³³ in the field of international cricket, as of critical importance in the context of property rights in (and of) professional cricketers in England. Of course:

"The main reason for Kerry Packer's entry into cricket was his desire to obtain exclusive rights of the lucrative televising of Test matches when the existing agreement with the Australian Broadcasting Commission (A.B.C.) expired early in 1979. When the International Cricket Conference (I.C.C.) refused this request, Packer's response was to form his own Test series to televise the game on his 'Channel Nine' network."¹³⁴

But, whatever the differences in motivation, just as Eastham's court case in 1963 had challenged the restraint of trade aspects of footballers' employment, Packer's organisation, World Series Cricket (W.S.C.), by its very existence, had the effect of questioning the legal basis of cricketers' employment terms and conditions. Indeed, it has been made clear in other branches of industry (sporting and otherwise) that restraint of trade, and associated practices DEPENDS on its 'non-litigation' by the restrained. The classic example in this area is, in fact, that of professional cricketers in England. It took the 'Packer case',¹³⁶ in the high court to show the real conditions prevailing in test and county cricket for English players, as had the Eastham court battle in the case of football a decade earlier. In the same way that the abolition of the maximum wage was achieved as part of the movement which took George Eastham's claim to court, the Packer affair substantially affected payments to

England test cricketers BEFORE the outcome of the legal action, since it hurried the authorities into concluding a deal with sponsors which had already been set in motion sometime earlier.

There is an even wider aspect to the question of industrial relations in professional team sports than just the effect of the Packer case on cricket. The improvements in the position of professional footballers in England since the early 1960's must also be seen as part of a more general rise in player associations in professional team sports throughout the world. Although one of the foremost industrial relations students of this development, Braham Dabscheck, has suggested that the football industry's maximum wage and retain and transfer regulations are "unique in the history of industrial employment"¹³⁶, it would in fact be more correct to say that the particular FORM of restrictions manifested in football is unique. He has also extensively reviewed the restrictive employment conditions in "professional team sports in Western market-type economies."¹³⁷ As Dabscheck himself puts it:

" . . . it is apparent that the professional team sportsman encounters a number of unique employment problems - problems that are not experienced by the 'normal' working man. As professional team sports developed the clubs, or owners, instituted, for their own convenience, a number of labour-market controls which severely limited the economic freedom of players. The key feature is the reserve (United States of America and Canadian usage) or transfer (United Kingdom, Western Europe and Australian usage) system

which can bind a player to the initial club he signs with for the rest of his playing life."¹³⁸

Thus any contextual analysis of the legal rules of a professional team sport - football in the case of the present study - ignores the GENERAL development of relations in parallel sports at its peril. Just as there are comparisons between the restrictive contractual positions of professional footballers, cricketers, speedway riders, baseball players and so on, so are there links between the histories of the various player associations on the respective sports.¹³⁹ Dabscheck has documented the process whereby:

"players in a number of different team sports have attempted to form player associations as a means of mutual self-protection and advancement . . . , The earliest known players' association was the national Brotherhood of Professional Baseball Players, which formed amongst baseball players in the United States of America in 1885. This body disintegrated in 1890 after an unsuccessful attempt by the players to form their own league . . . There have been three other short-lived and unsuccessful player associations in US baseball - the Protective Association (1900-02), the Fraternity (1912-18) and the Baseball Guild (1946). English rugby league players had an association in the immediate years before and after the First World War. In 1955 the players of Australia-rules football in Victoria unsuccessfully attempted to form

a players' union . . . More recently we have witnessed the formation and growth of player associations in a number of sports. In the 1960's player associations were formed, or became more active and professional, in the major US sports of baseball, (American) football, basketball and ice-hockey. Similar associations were formed amongst Canadian football players and soccer players in a number of Western European countries. English and West Indian cricketers also have their own associations . . ."¹⁴⁰

It has been a particularly noticeable development in football in various countries. As Dabscheck notes:

"The recent growth of soccer in the US has seen the emergence, in 1977, of the North American Soccer League Players Association (NASLPA). It is interesting to note that this body has become a branch of the relatively young but more established and successful player association of US football - the National Football League Players Association, (NFLPA). In January of 1978 these two bodies, with the Canadian Football League Players Association (CFLPA) decided to form a confederation of player associations called the Professional Athletes International (PAI). A similar confederation has been formed amongst the player associations of soccer players in Western Europe. The Federation internationale des footballeurs

professionals (FIFPRO) is an amalgam of eight player associations the general objectives of which include full contractual liberty."¹⁴¹

Thus the development of players' union organisations, especially in the period since the late 1950's, has continued apace and appears likely to be stepped up even further. In 1981, for example, the Rugby League Professional Players' Association announced a merger with the white-collar union, the Association of Professional, Executive, Clerical and Computer Staffs (APEX) much to the amusement of certain newspapers¹⁴² and the chagrin of some individual Rugby League professionals.¹⁴³ It is unlikely that the P.F.A. will merge with another trade union, however. The overtures regularly made by unions such as the General, Municipal, Boilermakers and Allied Trade Union (formerly G.M.W.U.) have all been rejected so far because it is felt "that the P.F.A. does a specialised job"¹⁴⁴ and since there would appear to be no advantage in amalgamation with other trade unions, whether blue-collar or white-collar, the P.F.A. "hopes to remain autonomous"¹⁴⁵ for the foreseeable future. On the other hand, as we noted in Chapter 3, the Scottish P.F.A. did amalgamate in 1975 after an independent existence since 1946.¹⁴⁶ It now represents some 700 members from the General, Municipal and Boilermakers Union (G.M.B.A.T.U.) office in Glasgow, whereas elsewhere in the U.K. there has been a Northern Ireland Professional Footballers' Association only since 1975.¹⁴⁷

As has been indicated earlier in this chapter the present contractual position is that football players are now, theoretically, free to move to a club of their choice at the end of any contract they may sign, so clubs can no longer hold players for an indefinite period.¹⁴⁸ An

'independent tribunal', the Football League Appeals Committee,¹⁴⁹ under authority of Rule 50(4) of the Football League rules, has been designated to work out compensation fees for clubs in dispute over the value of a player's services. However, such a system has not necessarily been overwhelmingly accepted by the players¹⁵⁰ even though the state of players' mobility in professional football is in some ways now greater than in certain other sports¹⁵¹ in Britain, and also in America,¹⁵² where there is still great legal and political debate about restraints of trade in sports and entertainment industries.¹⁵³

I have been concerned in this Chapter to situate the 'football revolution' in a precise international and national context. I have queried the nature of the alleged subjectivity in law granted to the professional footballer by virtue of the abolition of the maximum wage in 1961 and the Eastham court action in 1963. There is no doubt that changes have occurred in the social relations of soccer since the late 1950's but they are not necessarily the ones which we read about in the daily newspapers or have presented to us in sports and news coverage on television or radio. To analyse more rigourously the 'place' of the footballer in the modern, post-1950's era we need to consider, in some depth, what we might call the legal regulation of professional football.

REFERENCES

1. Marx, CAPITAL, Vol. 1, op. cit., page 165.
2. op. cit., pages 77-78.
3. op. cit.
4. op. cit.
5. ANOTHER BREATH OF FRED EYRE (Senior Publications, 1982), page 164.
6. see Hill, op. cit., pages 19-90, for a detailed, though, obviously personal, account of the negotiations surrounding the abolition of the maximum wage, and its immediate aftermath.
7. Sharpe (ed), op. cit., Chapter 20, "The Rights of Players", page 178.
8. THE STORY OF FOOTBALL, op. cit., page 187. The "period" referred to in the quote is 1945-1978.
9. on just how close the P.F.A. came to striking, see Hill, op. cit.
10. For a view of this settlement by the then Chairman of the P.F.A., Derek Dougan, see DOOG, Chapter 10, op. cit.
11. See Ken Foster: "Roads to Freedom: Employment in Sport" in J. Neville Turner and Charles Jenkins (eds), op. cit.
12. Witty, op. cit., page 274.
13. ibid., page 283.
14. ibid., page 283. See also Chapter 2 of this thesis.
15. interview with Cliff Lloyd on October 28th, 1980, op. cit.
16. See Sir John Wood: "The Professional Footballer's Contract" in Turner and Jenkins, op. cit., ; Dougan and Young, op. cit., Chapter 5; Dougan op. cit., Chapter 10; Guthrie, op. cit., postscript; Dabscheck, op. cit., pages 249-251.
17. REPORT OF THE COMMITTEE ON FOOTBALL (Chairman: Norman Chester) (H.M.S.O., 1968).

18. C.I.R. Report No. 87: PROFESSIONAL FOOTBALL (H.M.S.O., 1974).
19. Wood, op. cit., page 86.
20. C.I.R. Report, op. cit., paragraph 267, page 77 (see generally pages 75-78).
21. op. cit., pages 74-75.
22. the Counsel was in this case, in fact, Edward Grayson.
23. Eastham v. Newcastle United F.C. (1964) Ch. 413.
24. op. cit., page 61.
25. op. cit., page 134.
26. judgement by Wilberforce J., Eastham v. Newcastle United F.C., op. cit.
27. op. cit., pages 85-86.
28. George Best, for instance, is one notorious example. See Michael Parkinson: BEST: An Intimate Biography (Arrow, 1975), passim.
29. Wood, op. cit., page 86.
30. See Guthrie, op. cit., page 63, on the Players' Union's part in the setting up of this fund in 1949. The player, incidentally, got the other 5%, as long as he had not requested a transfer.
31. for somewhat conflicting accounts see Dougan: DOOG, op. cit., Ch. 10; Wood, op. cit., pages 86-89; Guthrie, op. cit., postscript; Gowling, op. cit., Ch. 14.
32. Dougan, ibid., page 137.
33. to use Guthrie's phrase, dubious as it is.
34. Hardaker (with Bryon Butler) op. cit. Interestingly, despite this entrenched attitude and irrespective of FOUL'S 'Baron Hardup' jokes, Nickolds and Hey (eds) op. cit., passim, Hardaker is remembered with a certain respect and affection by some of today's P.F.A. representatives.

35. just to cite one example at random, see Gordon Lee, then Everton F.C. manager and in conflict with players such as Bob Latchford, quoted on 16th August 1980, in response to what he claimed were outrageous wage demands of some of his playing staff.
36. Paul Hince: "Money-Grabbers" in The MANCHESTER EVENING NEWS September 30th, 1981. Hince, an ex-professional footballer (although never a particularly highly paid or successful one), and now a sports journalist, exposes himself in the article to charges of hypocrisy and personal jealousy, exactly the characteristics he condemns in today's professional players.
37. *ibid.*
38. *ibid.*
39. One well publicised incident which was cited by players I interviewed was Terry Yorath's proposed transfer from Spurs to Leeds United in the 1980/1 season when Leeds Chairman, Manny Cussins, released details of Yorath's wage and signing-on fee claims when they were simply, as the then Manager Allan Clarke admitted, the first stage in bargaining negotiations, which were supposed to be private and confidential.
40. even Hince, *op. cit.*, paradoxically, argues that the maximum wage should be "one which would give . . . players a healthy standard of living." The problem is, of course, what such vague phrases mean. One set of radical proposals for solution to Britain's economic problems has argued that a "major objective must be to win support for a maximum income limit, equivalent, say to four times the average wage - and even that would be around £28,000 a year in 1981"; see Francis Cripps, John Griffith, Frances Morrell, Jimmy Reid, Peter Townsend and Stuart Weir: MANIFESTO: A Radical

Strategy For Britain's Future (Pan, 1981), page 187.

41. *ibid.*, page 187.
42. "Hope Retained" in *The OBSERVER* August 9th, 1981; the Football League rule covering the maximum wage of apprentices is Rule 43(6); see *THE FOOTBALL LEAGUE HANDBOOK*, Season 1981-82 (Football League, 1981).
43. For a most entertaining, though often poignant, autobiography from the Football League 'depths' see Fred Eyre: *KICKED INTO TOUCH* (Senior Publications, 1981) which is far more representative of the English professional footballer today than any of the - usually "ghosted" - glossy, 'star footballer tells all' books. Ironically what is not representative about Eyre's life is that he became a very wealthy businessman, getting the 'opportunity' to do so precisely because he failed to make the grade as a professional player. Indeed, a recent assessment of average wages of Fourth Division players (aged 17-27) is (approx.) £130 per week, or £6,760 per year; see Simon Inglis: "Putting the Brake on Sky-High Transfers" in *The MANCHESTER FLASH* November 27th-December 3rd, 1981.
44. "Hope Retained", *op. cit.*
45. Barbara Wootton: *THE SOCIAL FOUNDATIONS OF WAGE POLICY* (Unwin, 1962), pages 68-69, stresses the social reasons for the maintenance of the maximum wage for professional footballers, e.g. that they were regarded as lesser beings than say rugby union (and other amateur sports) players. It would seem that such prejudices have pervaded the modern era, since 1961, in such a way that all players can be regarded as 'overpaid', 'greedy', 'bleeding the game to death', etc.
46. Cliff Lloyd, in an interview, *op. cit.*, stressed to me the declaratory nature of the judgement.

47. For instance, Frank Butler in *The NEWS OF THE WORLD* November 8th, 1981 recalled it as perhaps the PFA's greatest victory in "Speakeasy: Soccer To Take Gag Off Players".
48. FOOTBALL INSIDE OUT, op. cit., page 165.
49. Braham Dabscheck: "Player Associations and Professional Team Sports" in *LABOUR AND SOCIETY* Vol. 4 No. 3 1979, pages 233-234.
50. To modify Foster's phrase, op. cit.
51. *The NEWS OF THE WORLD* December 1st, 1974.
52. Guthrie, op. cit., page 147 makes the point that the managers who now defend the status quo were in favour of, for instance, changes in contracts when they were, themselves, players.
53. *The TIMES* November 26th, 1974 quoted Bertie Mee, then Arsenal's manager as estimating that "the players demands could lead to 500 players being thrown out of full-time work", and Joe Mercer, then general manager of Coventry City, as saying that "it was the end of football as we know it".
54. Whom, Guthrie, op. cit., page 156, cites as one of the few journalists knowing as much about football as prose!
55. *The SUNDAY TIMES* December 1st, 1974.
56. "Freedom For Players - But At What Price?" in *The TIMES* November 29th, 1975.
57. *ibid.*
58. *ibid.*
59. An agreement which was only, initially, implemented in part, thereby abolishing the maximum wage. See Hill, op. cit., pages 79-82 for some interesting press quotations on the interpretation of the Football League players' contracts issue. Newspaper articles in the 1974-78 period were reminiscent of those in

- January 1961 when as Hill said, on reading them, we thought "English football had turned the corner . . . (ending) the era of muddling, mis-handling, inefficiency and autocracy."
60. quoted *ibid*, page 82.
 61. *ibid*, *passim*.
 62. *ibid*, Chapter 5. Hill quotes one journalist as writing that "'the Football League, born in 1888, died of shame at high noon yesterday'" after the President of the League, Joe Richards, had said on April 14th, 1961 that, "'(c)ome what may, the Football League Clubs will not alter the present retain and transfer system'", only three months after agreement on seven alterations to it had been concluded!
 63. *op. cit.*
 64. For instance, Ronnie Clayton, ex-Blackburn Rovers and England player, called his autobiography A SLAVE TO SOCCER, deliberately distancing himself from those who describe themselves as 'soccer slaves' (Stanley Paul, 1960).
 65. *op. cit.*, page 97.
 66. *op. cit.*
 67. Foster *op. cit.*, page 96.
 68. *ibid*, page 100.
 69. *ibid*, pages 100-101.
 70. *ibid*, page 102.
 71. *ibid*, page 102.
 72. European football administrations have this system; so too does the U.S.A.
 73. Dougan, DOOG *op. cit.*, Ch. 10, and Gowling, FOOTBALL INSIDE OUT, *op. cit.*, Ch. 14 are very critical of the six clubs who impeded the settlement of the original package.
 74. see Harry Harris: "War on Sky High Fees", in The DAILY MAIL November 14th, 1981.

75. *ibid*, Peter Johnson: "Players Predict End to £1m Deal" in *The DAILY MAIL* November 10th 1981, and Ian Ridley: "Plan to End Big Fees" in *The GUARDIAN* November 10th, 1981.
76. see, Michael Smith: "Finally An Own Goal" in *The GUARDIAN* December 18th, 1980, and Brian Scovell: "The Real Goal Football Has To Score" in *The DAILY MAIL* August 31st, 1981.
77. Harris, *op. cit.*, notes that Hill, for instance remained adamant (in 1981) in his opposition to such a system.
78. Inglis, *op. cit.*, notes that Gordon Taylor, P.F.A. Secretary, regards the corresponding effect of the multiplier system of compensation for players at the end of their contract as being to free more club funds for wages for players.
79. Keeton, *op. cit.*
80. *ibid.*, page 41.
81. *ibid.*, page 41.
82. Tommy Lawton: *WHEN THE CHEERING STOPPED: The Rise, the Fall* (Golden Eagle Press, 1973), page 9.
83. I am using this in the accepted sense in sociological discussion - referring to the assimilation of 'working class' individuals into the 'middle class' - unlike Dunning and Sheard, *op. cit.*, who talk of society as a whole becoming bourgeoisified, gentry and all.
84. see Stephen Wagg: 'Well, Brian: A Sociological Study of the Professional Football Community', M. Phil. thesis, University of Leicester, 1977, Chapter 3, for the only study known to this author.
85. BOBBY MOORE: *The Authorised Biography* (Everest, 1976), page 182.
86. *op. cit.*
87. *ibid*, Appendices 4 and 5.
88. *ibid*, Appendix 10.

89. *ibid.*, page 312.
90. *ibid.*, page 312.
91. "'Blunt Spurs' - book review of THE GLORY GAME," *op. cit.*
92. *ibid.*
93. Especially, Charles Critcher: "Football Since the War" in John Clarke, Chas. Critcher and Richard Johnson (eds): WORKING CLASS CULTURE: Studies in History and Theory (Hutchinson, 1979). See also an earlier version of this essay, "Football Since the War: A Study in Social Change and Popular Culture" (Centre For Contemporary Cultural Studies, University of Birmingham, 1972), and "Football and Cultural Values" in WORKING PAPERS IN CULTURAL STUDIES, No. 1, 1972. For aspects of a similar analysis in a different context see John Clarke: "Football and Working Class Fans: Tradition and Change" in Roger Ingham et al: FOOTBALL HOOLIGANISM: the Wider Context (Inter-Action, 1978) and "Football Hooliganism and the Skinheads" (Centre For Contemporary Cultural Studies, University of Birmingham, 1973). Both Clarke and Critcher tend towards the 'romantic' pole of the origins of modern football debate (see Ch. 1 of this thesis, above).
94. in Clarke, Critcher, and Johnson (eds), *ibid.*, page 164.
95. see, this thesis, Chapter 3 above. Bobby Charlton himself, it seems, suffers similarly. The DAILY MAIL September 11th, 1981, in an article by Charlton and John Roberts: "England, My England", quotes Charlton as saying "(t)he public have lost their sympathy with footballers . . . (j)ust after the war players seemed to belong to the society in which they played."
96. It has been a problem, particularly, within Marxism; see Barry Hindess: "The Concept of Class in Marxist Theory and Marxist Politics" in Jon Bloomfield (ed):

- CLASS, HEGEMONY AND PARTY (Lawrence and Wishart, 1977); "Class and Politics in Marxist Theory" in Garry Littlejohn et al (eds): POWER AND THE STATE (Croom Helm, 1978), and Paul Hirst: "Economic Classes and Politics" in Alan Hunt (ed): CLASS AND CLASS STRUCTURE (Lawrence and Wishart, 1977).
97. The seminal work around this theme was J. Goldthorpe and D. Lockwood: THE AFFLUENT WORKER IN THE CLASS STRUCTURE (Cambridge University Press, 1969).
 98. for example, see John Westergaard, and Henrietta Resler: CLASS IN A CAPITALIST SOCIETY: A Study of Contemporary Britain (Penguin, 1976).
 99. J.H. Goldthorpe (with C. Llewellyn and C. Payne): SOCIAL MOBILITY AND CLASS STRUCTURE IN MODERN BRITAIN (Clarendon, 1980). There are obviously, nevertheless, severe criticisms which can be levelled at this study; see Barry Hindess: "The Politics of Social Mobility" in ECONOMY AND SOCIETY Vol. 10 No. 2, 1981, and Terry Johnson and Ali Rattansi: "Social Mobility Without Class" in ECONOMY AND SOCIETY Vol. 10 No. 2, 1981.
 100. as part of the T.U.C.'s "JOBS EXPRESS" Campaign.
 101. in his MA thesis op. cit., page 240.
 102. that is, not 'superstars', who, contrary to the impression given by some of the literature, are relatively few in number.
 103. Nickolds and Hey (eds) op. cit., passim.
 104. For instance, ibid., pages 67 and 115, and Danny Blanchflower 'Foreword' to Guthrie, op. cit.
 105. See Gamble, op. cit., Taylor in Cohen (ed) op. cit., page 147, and also George Sayers Bain: "Trade Union Growth and Recognition", Research Paper No. 6, ROYAL COMMISSION ON TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS (H.M.S.O., 1967).

106. on the significance of the change of the union's name to association, see Chapter 3 of this thesis above.
107. Derek Dougan, one of those players' organisation officials frequently attacked as having used the Union as a vehicle for his own 'embourgeoisement', has criticised the affluent footballer thesis as over-simplified, reactionary and itself responsible for some of the root problems of the football industry today; see Dougan: HOW NOT TO RUN FOOTBALL, op. cit., Ch. 1.
108. interview, op. cit.
109. ibid.
110. ibid.
11. formerly F.L.S.M.A. (ie. the Football League Secretaries and Managers Association), now known as the F.L. Executive Staffs Association, (F.L.E.S.A.).
112. see C.I.R. Report, op. cit.
113. THE HISTORY OF THE FOOTBALL ASSOCIATION, op. cit., page 390.
114. SOCCER IN THE FIFTIES, op. cit., page 174.
115. Dougan, HOW NOT TO RUN FOOTBALL, op. cit., page 50, recalls his experience as P.F.A. Chairman in negotiations with F.L.M.C. member (the late) Bob Lord of Burnley F.C., who told him "Dougan, why don't you leave the administration to us and get on with playing the game?"!
116. C.I.R. Report, op. cit., page 83, para. 226.
117. Gordon Taylor, the P.F.A. Secretary, wrote to me on January 29th, 1982 that "a Committee of study involving the Football Association and Football League, the Executive Staffs Association, the P.F.A. and the refereeing bodies has been formed under the auspices of the F.A. to discuss common problems", although it is not, in fact, called by the name that the C.I.R. proposed.

118. something which in 1981 was beyond the planning stage and seen as a necessary part of the P.F.A.'s activities by the Secretary, Gordon Taylor. Previous journals have been produced by the union, for instance THE FOOTBALL PLAYERS MAGAZINE before the First World War. Currently a P.F.A. newsheet is produced - however, it is now regarded as an unrealistic option for the Union to undertake production of a journal.
119. see my unpublished "Comment on the C.I.R. report" for an immediate contemporary assessment of their value, School of Law, University of Warwick, 1974.
120. in an interview with the ex-P.F.A. Chairman, on May 15th, 1981, Alan Gowling noted that the P.F.N.C. meets regularly, every few months.
121. Dougan: HOW NOT TO RUN FOOTBALL, op. cit., passim laments the failure to implement the report; indeed he suggests that many of football clubs' directors have never even been aware of its content.
122. ibid., passim.
123. Political and Economic Planning Report: THE FOOTBALL INDUSTRY, in PLANNING, 17 (1951) and Political and Economic Planning Report: ENGLISH PROFESSIONAL FOOTBALL in PLANNING, 32, No. 496 (1966).
124. op. cit.
125. the C.I.R. Report, for instance, was clearly mindful of the hostility of governing bodies to changes in the system of contractual 'legislation', and, indeed, to any change whatsoever. See my "Comment" op. cit.
126. op. cit.
127. W.T. Murphy: "Searches For Spaces: book review of Burton and Carlen: OFFICIAL DISCOURSE and Thomas Mathieson: LAW, SOCIETY AND POLITICAL ACTION", in (1981) 44 MLR 474, provides a useful discussion of some of the problems with Burton and Carlen's account

- referred to in Chapter 1 of this thesis, above.
128. Burton and Carlen rely here on the work of Jacques Derrida. For a useful introduction to his work, see D.C. Wood: "An Introduction To Derrida" in RADICAL PHILOSOPHY No. 21, 1979.
 129. Burton and Carlen, op. cit., page 13.
 130. Murphy, op. cit., page 479.
 131. The case of the '2nd Chester Report', a much less grand affair than its predecessor and set up by the Football League, rather than central government, to inquire into the finance and structure of football in the 1980's, is instructive. See David Lacey: "Soccer at Chester's Crossroads" in ~~The~~ GUARDIAN, April 26th, 1983, a comment on the future prospects of proposals of the Report of the Committee of Inquiry Into Structure and Finance of the Football League (Football League, 1983). In the event a few minor recommendations were accepted by a meeting of League Chairmen on April 26th, 1983 but the more 'radical' proposals, such as restructuring of the Leagues, were not. A suggestion that the three-quarters majority requirement be modified to three-fifths was also unacceptable to the League.
 132. Bob Willis (with Patrick Murphy): THE CRICKET REVOLUTION: Test Cricket in the Nineteen-Seventies (Sidgwick and Jackson, 1981), page 5.
 133. For the most rigorous, if subjective, journalistic account of the Packer story see Henry Blofeld: THE PACKER AFFAIR (Collins, 1978).
 134. Peter Sloane: SPORT IN THE MARKET? The Economic Causes and Consequences of the 'Packer Revolution'. (Institute of Economic Affairs, Hobart Paper No. 85, 1980), page 45.
 135. GRIEG v. INSOLE (1978) 1 W.L.R. 302. For useful

legal analyses of this case in the specific context of sporting restraints, see M.J. Elliott: "Law and Sport: The Public Regulation of Private Activity" and C. Weston: "Aspects of the Private Law Framework of Amateur and Professional Sport" in Neville Turner and Jenkins (eds), op. cit.

136. Dabscheck in Cashman and McKernan (eds), op. cit., page 229.
137. Dabscheck: "Player Associations and Professional Team Sports", op. cit., page 225.
138. *ibid.*, page 225.
139. of course, this is not necessarily restricted to team sports. Links can be made between developments in 'individualist' sports such as tennis, motor racing and so forth, and the industrial relations of professional team sports. The connections are likely to grow given that many 'individualist' sports have only spawned player associations in very recent years.
140. Dabscheck, "Player Associations and Professional Team Sports", op. cit., page 225-226. FIFPRO, incidentally, includes the P.F.A. and Scottish P.F.A. and enables "players' unions to discuss common problems and to co-ordinate their activities"; see C.I.R. Report, op. cit., page 36.
141. *ibid.*, page 226.
142. For examples of poor satire and smug, barely concealed, anti-union feelings, see Michael Parkin: "Rugby Men Gain Muscle" and Editorial: "Unions Against the Union" in ~~The~~ GUARDIAN December 4th, 1981. For a, perhaps surprisingly, much more objective account see Bryan Carter: "League Men Bank on New Deal" in ~~The~~ DAILY MAIL December 3rd, 1981.
143. Some players, particularly from Lancashire, protested at the move. However the amalgamation came only just

- in time as the players' association needed to threaten to strike in September, 1982 in a dispute over insurance payments. See "Players call off strike" in *The OBSERVER* September 19th, 1982.
144. interview with Steve Coppel, February 22nd, 1983.
 145. *ibid.*
 146. the original Scottish Players' Union was dissolved in 1913, two years after its formation in 1911.
 147. see Dougan: DOOG, *op. cit.*, page 35.
 148. However, Hereford won a Football League test case in November 1982 to retain the registration of their goalkeeper, Drew Brand, without having to pay him. The club had refused to pay his wages since he refused to accept a new contract in July, 1982.
 149. for composition and powers see F.L. HANDBOOK, *op. cit.*, Rule 54.
 150. see interview by Terry McNeill with Frank Stapleton, "On Trial" in *The NEWS OF THE WORLD* August 30th 1981, after Stapleton had been transferred, amidst much acrimony, from Arsenal to Manchester United at the end of his contract. The tribunal on this occasion consisted of Gordon Taylor (P.F.A.), Graham Kelly (Secretary of the Football League), John Camkin (FLSMA) and Sir John Wood of Sheffield University, Faculty of Law. In Stapleton's view he was treated as an 'offender' whilst the two clubs 'wheeled and dealt' over the question of a very large transfer fee.
 151. For instance, speedway where the most restrictive rules relating to player mobility are to be found.
 152. See Dabscheck: "Player Associations and Professional Team Sports", *op. cit.*, pages 227-237, for an excellent account of the "quest for freedom" pursued by the Major League Baseball Players' Association

(MLBPA) and the N.F.L.P.A. in the United States of America, as well as the P.F.A. in England and Wales. On the most recent disputes in baseball and 'pro-football' in U.S.A., see Bud Collins: "The Nation Without its Mastodons" in The OBSERVER September 26th, 1982.

153. for a review of recent American legal controversies in this area, see John Weistart: "Judicial Review of Labor Agreements: Lessons From the Sports Industry" in LAW AND CONTEMPORARY PROBLEMS Vol. 44 No. 4, 1981, and John Weistart and Cym Lowell: THE LAW OF SPORTS (Bobbs-Merrill, 1979).

CHAPTER 5: THE DISCIPLINE OF PROFESSIONAL FOOTBALL

"It was a wretched enviroment, which I compare . . . to an open prison, at least as far as I was concerned. And yet my years with Wolves were the most satisfying of my career. This is no contradiction. I loved the club, but not the managerial dictates and the petty forms of discipline imposed on us, the players."¹

" . . . the terraces . . . are no longer safe places and this will not change until discipline returns to our society . . . (t)hese young people would experience a severe shock if they had to submit to the discipline of professional football."²

In this Chapter, I want to examine the EFFECTS of legal regulation of professional football in England and Wales, which, as Chapters 2, 3 and 4 have indicated, has 'progressed' from the late nineteenth century to the present day. This affects both the player and, to a lesser extent, the spectator of professional football. The crucial effect of the restrictive labour contract of the professional footballer, with all its attendant implications (for example the control of 'personal' behaviour, on and off the field), has not been simply to limit the economic freedom of the player but to produce - literally, to historically CONSTITUTE - a more or less disciplined, regulated and dependent workforce for the football industry. Similarly, though with rather less marked success in some respects, the legal regulation of the spectator has been aimed at de-limiting the economic and cultural freedom of the 'football fan' and in so doing has largely produced a

passive - rather than active and participatory - audience for the game. There is also a wider aspect to all this, for professional football in England and Wales has a peculiar place in the social relations of U.K. society and its forms of popular leisure. In the last twenty years,³ parallel to and linked with the abolition of the maximum wage and players' freedom of movement struggles, there has been an emerging 'crisis' within the practices and regulation of popular forms of leisure, especially in the inner-cities, and even more particularly in the regulation of football.

CONTEMPORARY DEVELOPMENTS IN THE LEGAL REGULATION OF EMPLOYMENT CONDITIONS OF THE PROFESSIONAL FOOTBALLER

Although the 'freedom of contract' issue, along with its connotations of 'soccer slavery', has been the most publicised aspect of the conditions of employment of the professional player, there are other legal questions regarding security of employment which are also important. As ex-professional Eamon Dunphy, a particularly virulent critic of players' conditions, has noted:

" . . . conditions of employment are such that a reincarnated 19th century mill owner would be gratified to see that restrictive practices dear to his heart are alive and well in football.

Men can still be bought in the market place, apprentices (sic) are callously dismissed on completion of their apprenticeship, and the possibility of retirement through injury, without compensation, looms over every game - an additional tension in an already high-risk profession."⁴

On top of the transfer system, then, there are the problems of apprenticeship, compensation for injury, pension

rights, loss of wages through disciplinary proceedings and, more recently, 'unfair dismissal', which all affect, significantly, the daily life of the professional player. The failure rate⁵ of the apprenticeship system - moving, ideally, from the associated schoolboy position at 14, through apprentice to, eventually, professional - has been well known ever since it was introduced in 1960. Prior to this, youngsters were taken on as ground-staff boys and were even less secure in their employment. But even though only a small proportion of apprentices become long-term professional footballers, the insecurities of the professional game are perhaps greater still. These are, effectively, twofold: the risks of injury and retirement, and the question of behaviour, on and off the field.

As the C.I.R. Report pointed out, the "player's contract rarely, if ever, says anything about the holidays to which he may be entitled, sickness or injury benefits that may be provided by his club, pension provisions that may be made by the club . . ."⁶ The Report also went on to note the problem of insecurity in general, albeit offsetting it against the 'profit' to be gained from employment as a footballer:

"The attraction and drawbacks of a career in professional football as a player are fairly evenly balanced. To a professional player the attractions may be the glamour that is associated with being a top-class player, the relatively high pay, the tours abroad and the great satisfaction to be derived from applying individual skill in a job one enjoys. The drawbacks for a professional player are that at most points in his career he is insecure. At the beginning as an apprentice he may be

concerned that he will not be employed as a full-time professional by the club and later he may be concerned about staying in the first team, moving to a club in a higher division, the success (or lack of it) of his club, and the movement in short and long-term of his earnings. The worry about the possibility of injury is always in the background."⁷

The role of the players' organisation in alleviating the insecurity is the subject of some debate in the literature on the football industry. The accident insurance scheme, first negotiated during the period of Jimmy Guthrie's chairmanship of the P.F.A., although in rather unsatisfactory circumstances,⁸ has been seen as, in design, benefiting the club rather than the player.⁹ The present P.F.A. Secretary concedes¹⁰ that the Personal Accident Insurance Fund, administered by the Football League, is not entirely satisfactory, but notes that there is provision for P.F.A. members registered with non-League clubs who are covered for insurance by a scheme administered by the P.F.A. from the Accident Fund, providing for those members forced to retire through permanent disablement as a result of injury, and he also stresses the 100% increase in the sum available to players who have been injured and are no longer able to play at League level. The maximum amount is now £1,500 rather than £750 as in the past; still, it might be argued, 'peanuts' in the days of £1½ million transfer fees paid out by football clubs. Another source of criticism has been the Players' Provident Fund, secured again by the efforts of the Players' Union under Jimmy Guthrie's Chairmanship¹¹ in 1949, and boosted by the P.F.A.'s negotiation of the 10% transfer levy in 1967.¹² This was, however,

replaced in 1980 by a major step forward in pension rights for professional footballers. Moves towards pensions for players were made from the late 1960's onwards and as part of the 1978 settlement a Pension Scheme was adopted.¹³ Following negotiations with the Inland Revenue, the new scheme eventually agreed in April 1980, meant the end of players gaining 5% of the transfer fee (if they did not ask for the move) which had been introduced in 1967. The scheme is in the P.F.A. Secretary's words, "non-contributory but is funded by a 5% levy on all transfer fees within the Football League (and) from April 1980 until the date a player retires from the Football League he will receive at age 35 a tax free sum based on ~~34%~~ of his total earnings whilst registered as a Football League player."¹⁴ Players themselves see this development as one of the major gains for footballers won by the P.F.A. , since there was always scepticism¹⁵ amongst them about the Players' Provident Fund. All of the players interviewed as part of the field-work for this thesis unequivocally approved of the P.F.A.'s role in the emergence of the pension agreement; undoubtedly the prestige of the P.F.A. amongst its members in the very recent past has been given a major boost by the creation of the scheme, which makes professional footballers the only employees in the country - apart from deep sea divers - to be entitled to a pension at such an age. It has already had a considerable effect, "some highly paid players having acquired four-figure sums", and seems likely to end the era of "ex-international players falling on hard times."¹⁶

Other aspects of insecurity of footballers' employment have been challenged by the setting up of the Footballers' Further Education and Vocational Training Society Limited, a registered charity which is jointly financed by the P.F.A. and the Football League and provides assistance for any player preparing for a career when his playing days are over (and, for that matter, to ex-professional players).

It is run by the P.F.A. Education Officer¹⁷ from the Union's head-quarters in Manchester, fulfilling a promise made at the Players' Union A.G.M. in 1939 that "players should be given an opportunity during their playing days to take courses which would fit them 'to take their part in the commercial and business life of the country when their playing days are at an end'".¹⁸

Perhaps, the legal nature of the insecurity of employment of the player in the modern football industry is best highlighted by the extent of the control over the behaviour of professionals by clubs and controlling bodies. For instance, the case of John Ritson¹⁹ emphasises the subservient legal position of the player as regards dismissal over matters of discipline. Ritson was dismissed by his employers, Bury Football Club, after refusing to play for the manager (then Dave Connor) who had called him a "cheat and a disgrace". Ritson's claim that he was unfairly dismissed was turned down by the Industrial Tribunal considering the case. The player was thus held to be in clear breach of contract. Indeed, there is a wealth of auto-biographical and journalistic material²⁰ on the daily 'discipline' of professional football, displaying an overweening framework of regulation, both formal and informal. Suspension and fines²¹ are highly publicised (by local and national media) aspects of the player's life and are commonly applied for breach of rules relating to activities on and off the field and inside and outside the club.²² The modern situation with its appeals system²³ may well afford more opportunity for redress for 'wronged' players in comparison with days gone by, but the player is still harshly treated, nevertheless, when seen against the backcloth of modern industrial relations, and the application of notions of 'natural justice', in general. As Dougan and Young forcibly emphasise:

"The rules which determine the way of life of a footballer are arbitrarily

contrived by the F.A., the Football League and each club. These rules are made up without reference to the players supposedly in the interests of the game. It is only simple justice that in any reasonable society those who are obliged to live according to certain rules and to observe certain restriction of their liberty, should be there, or at least adequately represented when the rules are drawn up. The very idea would give the general run of football administration a blue fit, which only goes to show how strong is the principle of paternalism."²⁴

Participation in the appeals machinery by the P.F.A. had, in 1974 when the C.I.R. reported, at least been achieved on the tribunal of final appeal on field disciplinary offences²⁵ and on the independent appeal tribunal on contractual matters; though not as regards appeals on breaches of club discipline to the emergency committee of the F.A. executive committee, a body comprising at least three Football Association members one of whom must be the President of the Football League. For the 1980's, the procedure has been streamlined so that the F.L.M.C., then, on appeal, the F.L. Appeals Committee, hear appeals against club discipline, as well as on contractual matters generally. As far as representation is concerned, the P.F.A. provides an official²⁶ for field disciplinary hearings and for appeals on club discipline and contractual disputes, thus to some extent filling the gap left by the high court decision²⁷ to ban specifically legal representation, unless official club representatives are lawyers. Players tend to see such hearings as pre-determined anyway and do not always request a personal hearing. One player I interviewed commented that a F.A. disciplinary commission which deals with field

disciplinary offences usually accepts the referee's report and, since the player would have to pay the referee's expenses if he was required to attend personally and give evidence, the hearing is usually concluded in about five minutes. The disciplinary system, regarding field offences, prior to 1972 was regarded with even greater suspicion by players. As Derek Dougan, Chairman of the P.F.A. at the time articulates it, until then:

" . . . disciplinary procedures in the game caused a great deal of heartburn. The 'courts' run by the F.A. were often no more than the 'Kangaroo' variety. Justice was not always done, nor seen to be done. Players were resentful, feeling they would not get a fair hearing and referees were uncomfortable appearing before the disciplinary committees to give evidence.

Hearings were often reduced to fiascos, when players felt the evidence was loaded against them and that an official's word would always be preferred to theirs. Independent witnesses were not allowed.

After patient and constructive negotiations between the P.F.A. and the Football Association, new procedures were worked out and implemented and these are reviewed at the end of every season. The result is that we now have a system light years ahead of that which applied until the early 1970's."²⁸

The 'new' system involved an independent tribunal of final appeal²⁹ on field disciplinary offences to hear appeals from the F.A. disciplinary committee, and was introduced

by the F.A., as Dougan indicates, as a result of P.F.A. pressure after recommendations made in the Chester Report in 1968. Shortly after the new system was introduced in 1972, Ernie Machin, then a Coventry City player, won a case in the High Court (before Mr. Justice Bristow) which overruled the fine and suspension imposed on him after he had been sent off during a game at Newcastle two years earlier. Bristow J. said that the disciplinary procedure as it was then constituted was "against the rules of natural justice". In this case, at first instance, the use of television film evidence of the incident (on its own) against Machin was considered to be in breach of natural justice. However, the Court of Appeal heard the case after an appeal by the F.A., and, by a majority, reversed the decision of the High Court.³⁰ An interesting sequel to Machin's case occurred in the 1982-3 season when Michael Robinson of Brighton was fined £250 and banned for 1 match on television evidence used by an F.A. disciplinary commission hearing a charge of "bringing the game into disrepute".³¹ Although the referee had not seen the alleged incident - Robinson's butting of Watford goalkeeper Steve Sherwood - an F.A. Council member reported that he had seen it on TV and the charge was duly brought. Video film of matches is usually brought by players in their defence, not, as in the cases of Machin and Robinson by the F.A..

The disciplinary system in use by the 1982-1983 season, apart from the F.A. charging players with bringing the game into disrepute, involved a set procedure for sending off and players totalling a certain number of disciplinary points. The system involved a one match ban when a player was sent off for persistent misconduct (that is, 2 bookings in the same match) and a two match ban for a sending off for serious foul play. An amendment to the previous season's system³² ruled that a player who accumulates 21 or more

penalty points between the opening day of the season and the last Saturday in November was to be automatically suspended for three matches, whilst players collecting 21 or more points before the last Saturday in February were to be banned for two games. However, those who did not reach the 21-point mark until the last Saturday in April ~~were~~ to be suspended for just one match. After that date players on 21 points were to be censured and warned as to their future conduct. Players who went on to break the 31-point barrier faced an automatic two match ban regardless of the stage of the season and 41 or more points would mean facing an F.A. disciplinary commission, which has powers of suspension, leaving clubs to levy any fine. Under this 1982-3 season system, players were not to be allowed to ask for leniency on reaching 21 or 31 points; previously players could attend the hearing and plead mitigating circumstances, if they so wished, on reaching such totals, or else make a written plea for leniency and ask the commission to take into account any views they may have submitted to the F.A. about offences committed at the time of receiving a copy of the referees' reports.

The most significant change, however, in the legal regulation of employment conditions of the professional footballer, in recent years, has been the renegotiation of the standard form contract of employment. Appendix 2 of this thesis shows the standard form contract used prior to the beginning of the 1981/1982 season, whilst Appendix 3 has the newly agreed contract which came into force during that season. Alan Gowling, ex-Chairman of the P.F.A., contended³³ that the "old one had been in service for quite a while" and that the terms and language needed changing. After several years of P.F.A. negotiation with the F.A. and F.L. the new contract is perhaps most notable for its removal of the restrictive clauses on "free speech".³⁴

The new contract provisions mean that whatever is written or said by players must be 'factual' and must not bring the "game . . . into disrepute", (section 13 of new contract; see Appendix 3), but it removes the draconian regulations of the past. For instance, in the old standard form contract, under section 13 (c), (see Appendix 2), the player 'agreed':

"that he will not without the written permission of the club grant interviews nor write articles for newspapers or other publications nor take part in television or radio programmes and that he will submit such articles, etc to the club for approval before allowing publication of the same".

The player in the new contractual provisions is at least conceived - linguistically - as "responsible", although it remains to be seen how tribunal hearings (and the law courts) construe the terms and the language.³⁵ Clubs' rule books³⁶ and diverse disciplinary practices are frequently still of the 'nineteenth century mill owner' variety, though the development of club disciplinary committees at many clubs - frequently involving senior players as well as managers - tends to mitigate control over players, at least, as regards field disciplinary offences.³⁷

THE FOOTBALLER AS LABOUR POWER: PRIVATE CONTROL OVER PRIVATE PROPERTY ³⁸

The retain and transfer system, in particular, has institutionalised the idea that professional footballers are 'chattels' to be bought and sold as any other commodities.³⁹ However, the proper significance of the notion of the professional footballer as private property - as "labour power" - must not be misunderstood. Too frequently, accounts of the "alienation"⁴⁰ of footballers as commodities

have tended to over-emphasise the difference between the legal position of footballers and that of other employees in general. Such accounts:

"express the classic marxist position:
Mr Moneybags always did go to market
as a LEGAL subject . . . IDEALLY
market relations and factory discipline
demand an internalised self-control
rather than the penal technology of
a coercive social control".⁴¹

However, it is in fact the case that:

"ideal market relations have never
existed and the history of nineteenth
century policing and incarceration
is a history of attempts to school
industrial and rural labourers in
regular working habits and the keeping
of restrictive contracts".⁴²

It will be argued here that law has played a role in regulating professional footballers in England and Wales in such a way that "regular working habits and the keeping of restrictive contracts" have been instilled into the labour force of the football industry in an era when such discipline has tended to be regarded, in the wider employment sphere, as outmoded and belonging to an earlier period of the development of the labour market.⁴³

Perhaps the best exemplification of the discipline of football is the ubiquitous deference of the player to the manager or "boss".⁴⁴ This was revealed - if indeed revelation was necessary - to millions of television viewers in a documentary on the changeover in management at Manchester City from Malcolm Allison to John Bond during the 1980/1981 season. Bond, in his first meeting with the Manchester City players, uttered the 'immortal' lines:

"While you're here I'd like to think that you and I will know each other, I'll know you as the players and you'll know me as 'boss'. I don't say that for any other reason - for me to be the boss because I want to be up there and you to be down there - but I think its absolutely right because I think it shows a mark of respect . . . from now on in, when we're together you'll know me as 'boss'".⁴⁵

Bond, then went on to describe the "little forms of discipline" that were to be instituted:

"If people misbehave and do things wrong . . . for instance, if you're late in training you get fined; if you're late for the coach, you get fined; on match days everybody . . . will wear a collar and tie and jacket . . . that will be done, if you don't do that, you'll be fined."⁴⁶

Gerhard Vinnai, in his Frankfurt school analysis of the 'mass pyschology' of football elevates such examples of discipline in the industrial relations of the sport into a fixed, necessary concomitant of the "authoritarian", "dictatorial" relations of capitalism, with the utopian implication that a future system of social relations would abolish the need for such discipline:

"Even the authoritarian relationships of the work-place are retained on the football field, in suitably modified form. Footballers are given as little say in the way their talents are used as those who live from the sale of

their labour (sic) are allowed to determine the manner of its application. As one manager freely admits 'I am a dictator. In football there is no democracy . . .' The high performance sportsman has as little control over his training as wage-earners have over the type, duration and intensity of their output."⁴⁷

Such analysis has been rightly regarded with extreme scepticism, if not outright contempt, by the many reactionary apologists of the football industry in its present form. Desmond Morris for example, in his heavily criticised,⁴⁸ even ridiculed,⁴⁹ (not to mention over-priced) book, THE SOCCER TRIBE⁵⁰, is able to caricature the "left-wing extremist" or "socialist" interpretation of soccer, represented, for him, by Vinnai. He stops short - just - of dismissing it as "nothing more than political claptrap",⁵¹ developing aspects of Vinnai's arguments which fit in with his own thoroughly psychologistic and essentialist account of the origins and functions of football, but he is absolutely correct to expose the conspiratorial nature of FOOTBALL MANIA, which suggests that:

"While (the bourgeois manipulator) appeared to be giving intense pleasure to their workers by organising the new sport, they were in reality exploiting them. They were turning them into automatons, with the soccer match no more than a cleverly disguised play-version of the work style in the factories and businesses."⁵²

Vinnai's thesis does, indeed, perform a profound disservice to those who would wish to counter Morris', and others',⁵³

version of the psychological functions of football with a more adequate and rigorous social scientific account. Its' misplaced reasoning however, is not escaped by less conspiratorial Marxist theorists of 'discipline'. It has become increasingly fashionable in studies of legal regulation in particular social formations to rely on either Marx's analysis in CAPITAL, Volume 1,⁵⁴ or the expanded notion of legal fetishism contained in THE GENERAL THEORY OF LAW AND MARXISM.⁵⁵

Alternatively, in search of more adequate accounts of twentieth century 'capitalist discipline' in particular, a synthesis⁵⁶ of Marxism and the work on 'disciplinarity' of Michel Foucault, has been attempted. Such attempts are, however, fundamentally unsatisfactory. Foucault's analyses of power/knowledge relations are, in many ways, irrevocably opposed to those of both classical marxism, and its modern variants. As Colin Gordon⁵⁷ expertly shows, Foucault undoubtedly differs from, for instance, the Frankfurt school perspectives adopted by the likes of Gerhard Vinnai. Foucault⁵⁸, too, makes strenuous efforts to distinguish himself not only from "Marxists"⁵⁹ in general but what he calls "para-Marxists" in particular, such as Marcuse. Whatever accuracy we may attach to Foucault's 'self-labelling' it is seriously misleading, in promulgating accounts of discipline in social relations in the modern West, to fail to take seriously the positive aspects of Foucault's interrogation of social science orthodoxies, whether functionalist or marxist.

The major problem with the work of Vinnai - and other less conspiratorial marxists - in their explanations of the discipline of capitalist labour relations is their reliance on the notion of the 'despotism of capital'. As Paul Hirst has pointed out, this notion:

"means that capitalists and management
enjoy the right to dispose of the means

of production as they wish because they are private property in their possession. Further, that on the basis of this property capitalists can compel workers (who lack possession of the means of production) to submit to their direction, to accept the forms and conditions of work the owners and their representatives consider necessary. These powers are limited only by the resistance of the organised working class."⁶⁰

In this widely reproduced argument within Marxism, labour power is seen as simply private property for the property owner to control at will. Vinnai's conception of the footballer as labour power fits this exactly. But, as Hirst rightly indicates, the problem with such positions is that they consider:

" . . . property RIGHTS to be given in form, as an expression of the real economic relations of possession in the capitalist mode of production. But forms of property and the rights attaching to them are constituted in law. The rights of property can be changed by legislation and that change enforced, given the political and organisational means to do so. For example, . . . (the) legal capacity of the factory owner to 'do as he wishes' has been restricted since the introduction of the Factory Acts in the nineteenth century and has been increasingly restricted in different ways for different reasons ever since . . . To treat rights

as the recognition of the realities of possession supposes that there are settled realities of possession. But the capacity of a management to enforce ANY decision is not given."⁶¹

This heretical - in many Marxist circles - contention by Hirst, with which I concur, suggests most persuasively that there is "no necessary despotism of capital"⁶² (my emphasis). In other words, "existing capitalist property relations and forms of work organisation can be and are being modified by legislation, state enforcement and trade union practice."⁶³

How, then does such argument help to explain the discipline of football players' employment relations? The 'despotism' of the football club, as we have seen above, is only too well documented and displayed; so too is the 'despotism' of the Football Association and Football League with regard to the player. However, this is not a NECESSARY despotism, connected with - and reflective of - a capitalist 'mode of production'. Neither is there a utopian system of social relations BEYOND capitalism (for instance, socialism or communism) which will transform that despotism simply by virtue of a different combination of 'mode of production'/'relations of production'. The private control of the footballer as private property which has continued, relatively unchecked, since the introduction of professional football in England in the nineteenth century, can, however, potentially be modified by means of various strategies, legalistic and others.⁶⁴

However, to argue that there is no necessary despotism in the football industry, is not to claim that 'discipline', (in the sense in which Foucault means it), as such is dispensable, either in the present or future.⁶⁵ Foucault, as opposed to some of those who have appropriated his work⁶⁶ is not simply interested in showing how 'discipline'

in prisons, factories and other institutions connects with a specific 'mode of production' in the history of the industrialised world. Indeed, he is well aware that such institutions pre-date⁶⁷ the regime of discipline which he focusses on. He is concerned with the disciplinary techniques of GOVERNMENT (not necessarily, incidentally, by the state) of such institutions, which may well and in fact, often do, manifest themselves outside such closed institutions as factories, prisons, asylums and so on. It is Foucault's concept of "normalizing individuation"⁶⁸ - "whereby the individual is constantly measured against and systematically directed towards standards of performance set by the directing agency"⁶⁹ - which is important here. Such production of individuals is achieved in daily life quite apart from what are conceived to be disciplinary institutions such as the prison, factory and asylum. In fact:

"(d)isciplinarity radiates outwards from the closed space of the institution to affect conduct beyond its walls, to relate to the family, its domestic economy and internal management. Aspects of the disciplinary regime are to be found in the models of the domestic education of children, the supervision of the poor in their homes, and so on. The techniques of disciplinary 'government' find their systematic concentration in closed institutions like prisons but they are by no means confined there nor are they manifest in all closed institutions."⁷⁰

It could be said that the techniques of disciplinary government are also found in the training and general surveillance and supervision of the professional footballer. Moreover, they are first to be discovered there in the

birth of the professional player as a 'free' legal subject in the 1880's. Brian Clough and Peter Taylor, the former management team of Nottingham Forest F.C., who, for many, seem to epitomise the "dictatorial"⁷¹ attitude which Vinnai is so determined to connect, inextricably, to capitalism, began the 1981/1982 season by saying that they would push back the frontiers of physical commitment and mental application so far that no other team would be able to compete.⁷² Such achievement would be impossible without the techniques of disciplinary 'government' ALREADY historically instilled into the players through restrictive contracts and arbitrarily conceived and enforced regulations, laws and habits. Though such disciplinary 'government', in some form or other, might always be necessary, it can nevertheless be open to challenge and change, and the present conjuncture is a crucial time for such considerations.

WORKERS AT PLAY: PRIVATE CONTROL OVER 'PUBLIC PLACES'

The current historical conjuncture is one that might be characterised as exhibiting - amongst other features - a crisis in 'popular leisure', particularly that involving the urban, working class sector of the population. This contemporary crisis has its immediate roots in the reconstruction of the post-war years, the severe limitation of working class aspirations in the twenty years following the 'age of affluence', especially amongst youth,⁷³ and the unprecedented decline in British manufacturing industry, leaving, at the beginning of the 1980's, large sections of, especially, the manual working class population unemployed. This is not the place to undertake a comprehensive study of the history of the social relations of popular leisure itself; what is important to note is that it manifests itself most emphatically in a struggle over 'public' space, especially in the inner-cities.⁷⁴ This raises issues which have most frequently been seen in terms of problems of

'public order' and the government response has indeed been to consider the need for changes in public order legislation,⁷⁵ especially as a result of the inner-city "riots" in the early 1980's.⁷⁶ Indeed, it is likely that a kind of 'supervised liberty' will be the order of the day for the policing of popular leisure in 'public' spaces in urban areas in particular, for at least the decade ahead. Already, such techniques of surveillance and supervised liberty are well understood, by those, such as Foucault, who have documented disciplinarity in institutions of confinement, and also in education and domestic⁷⁷ life generally, over the last 150 years. In the case of popular leisure, the policing functions have been critical ever since the "profound transformation in the culture of the popular classes which occurs between the 1880's and 1920's,"⁷⁸ a period from which "the characteristic forms of what we now think of as 'traditional' popular culture emerge . . . or emerge in their distinctive modern form."⁷⁹

Football, and especially, the professional football industry has been, as we have noted, a crucial component of this history of modern popular leisure. As Arthur Hopcraft put it:

"The growth of football is not a footnote to the social history of the twentieth century but a plain thread in it."⁸⁰

Indeed, it could be argued that football's 'place' in popular culture has been highly specific ever since the making of a working class football culture in Victorian England.⁸¹ Professional football from the early days was to some extent "seen as a partial solution to the problem of boys who were unemployed or in dead-end jobs, and as an expression of that romantic paternalist interest in working class 'lads' which reached its apogee in the First World War."⁸² Football clubs from their beginnings were viewed as having a "moral function of overseeing the problems

of working class youth",⁸³ and football, above all other sports, was regarded in late Victorian and Edwardian England as the antidote to socialism.⁸⁴ Such a conception of one of football's social functions raises the question of the comparative failure of such a 'programme'. However as Foucault has shown in the case of institutions like the prison and its disciplinary field, 'unsuccessful' programmes are indeed common. As Gordon has argued:

"What Foucault illustrates . . . is a curious anti-functionality of the norm: the failure of prisons to fulfil their planned function as reformatories, far from precipitating their breakdown, acts instead as the impulse for a perpetual effort to reform the prison which continually reinvokes the model of its original, aborted programme. The history of the prison is one of many such epics of failure in the annals of social policy. Failure here is the norm."⁸⁵

Football, like the prison and asylum in earlier stages of the formation of modern capitalism, is a key 'site' of discipline, which has from its inception as a professional sport and a mass leisure industry in the late nineteenth century been a major, if slightly obscured, area of intervention in social policy. It has consistently been a target for social reformers who have perceived its 'failure'. In much the same way as Jacques Donzelot's *THE POLICING OF FAMILIES* studies how social interventions in the family have formed, and indeed transformed it,⁸⁶ the football industry in England can be regarded, not as a distinct, given set of institutions (football clubs, Leagues, administrative bodies, etc) but as a site within

the 'social' sphere where various social interventions deal "differentially with its various members and accord them distinct statuses."⁸⁷ What is certain is that in the 1980's a crisis now exists in what might be called the "policing" - in the sense that Foucault, Donzelot and others⁸⁸ have used it and thus in no way equatable with police forces as such though clearly including aspects of police practices and ideologies - of popular leisure, much as it did in a society of rather different social relations in the later part of the nineteenth century. The origins of the present crisis in the policing of football in particular are certainly deep, but in my view can be traced initially to the 'moment' of apparent freedom from serfdom in the early 1960's. 'Private' freedom was ushered in whilst a tightening of the 'public' domain, involving spectators as well as players, ensured a disciplining and regulation of that "freedom".⁸⁹ One 'public' space where this has become manifest is the professional football field itself. Jimmy Greaves, who quotes⁹⁰ Geoffrey Green as being responsible for modern football's epitaph, 'What has gone from the game - I suspect irretrievably - is fun', puts it well in the following anecdote:

"One of the best laughs I had while at Chelsea was during a League match against Everton after they had scored AGAINST us. Actually we scored it for them and I still rate it one of the all-time unforgettable goals. If there had been action-replay machines around I am sure they would still be showing it as a comedy classic. A long shot from an Everton player slipped under the body of our England international goalkeeper, Reg Matthews. Reg scrambled up and chased after the

ball, hotly challenged by our big, bold captain Peter Sillett who thought he had a better chance of clearing it. They pounded neck and neck towards the goal. Reg won the race and then instead of diving on the ball elected to kick it away. He pivoted beautifully and cracked the ball dead centre - straight into the pit of Peter Sillett's stomach. The ball rebounded into the back of the net and Peter collapsed holding his stomach the rest of us players collapsed in laughter."⁹¹

Greaves sets this experience (particularly untypical anyway) against that in later years of his professional career, in the late nineteen-sixties and early nineteen-seventies, when he suggests such an incident would simply not have occurred. It may well be an accurate reflection of changes in the organisation and nature of professional soccer in England, in the sense that a certain degree of 'fun' has disappeared from some aspects (particularly on the field of play) of the life of the professional footballer. Peter Barnes, of Leeds United and England, has, for example, amongst many modern players, gone on record as saying that, "It is a job (that is, work) not fun",⁹² specifically distinguishing his experience of playing in England from that of players from countries such as Brazil and Argentina where, Barnes contends, footballers ENJOY the game. But these sort of statements (truthful or not) also mislead if they blind us to the continuing general conditions of employment of professional footballers over nearly a century. Despite periodic resistance by SOME individual players - which now takes the form of using their bargaining position as highly marketable entertainers to make themselves

financially secure for life (for instance, Kevin Keegan , Trevor Francis etc), as well as sometimes actually enjoying their work - the player has been, and still is, regarded as private property ever since the act of legislation of professionalism in 1885. The control of club, League and Football Association, has remained substantially the same over the years. The player remains an 'asset' to be arbitrarily controlled, disciplined or disposed of, as somebody else thinks fit.

As if to serve as a reminder of such social relations in the industry, and to emphasise the encroachment on the 'private' sphere of football club of the 'public' regulatory forces of police and law courts, the 1980-1981 season opened with a rush of prosecutions, and threats of prosecutions, for public order and other, criminal offences ON THE FIELD of play. Not that 'public' intervention, through police and courts, on the players' playing terrain is unheard of in the history of professional football in England and Wales. For example, as we have seen in Chapter 2 from the early period of professionalism there are records of a number of cases of legal regulation of players behaviour. This tendency of players to be involved in disturbances, of course, is not simply confined to 'on the field' behaviour,⁹³ but it is certainly the playing side which has recently come to be the focus of attention of academic lawyers, law enforcement agencies, and the football authorities themselves. It has not, until the 1908-1 season, been a general practice of the civil authorities to bring charges against players who 'misbehave' on the field. That is not to argue that there were no earlier attempts to do so. If we look back to the 1950's, for instance, Tim Ward,⁹⁴ then manager of Barnsley F.C., recalls that when any opposition player was sent off for violent conduct a policeman would approach the manager, out of courtesy,

after the game to ask the player on the receiving end to see if there was a desire to bring assault charges against the sent-off player. In fact, Ward always refused to allow the policeman to see the player concerned. It may well have been paternalism, born of the 'soccer slavery' era, which prompted such managerial action and it would indeed be interesting in this context to know how widespread such practices were in the 1950's and 1960's. The same manager tells of one perhaps even more surprising legal intervention in a slightly earlier period when he was a player in a post-war game in Manchester after one of his Derby County colleagues had hit a spectator when leaving the field at half-time - a telling reminder, incidentally, that 'on field' behaviour can often involve spectator/player/coach/official conflict as well as player v. player - whereupon two policemen immediately came into the dressing room of the away team to arrest the player. In the event, the player did in fact continue with the second half of the game as his team-mates were not exactly forthcoming when the policemen required clear evidence of the assault! But the football governing bodies have frequently been reminded that when one player attacks another with fists or feet, or alternatively, attacks an official, that the action amounts to the criminal offence of assault.⁹⁵ The very great increase in televised soccer, enabling such offences to be witnessed by millions of viewers has, in the last two decades moved politicians and law officers to warn football authorities that unless they took effective steps to discipline players and prevent such incidents, the time could come when those responsible for administering the criminal law might have to step in. This is effectively what happened at the beginning of the 1980-1981 season when there was a veritable spate of interventions by individual policemen against

players' on the field behaviour. As Grayson has put it:

" . . . the season ended almost as it began. The minority disgrace of England's supporters at Basle on the occasion of the end-of-season international against Switzerland threw the mind back to the opening explosions of violence both on and off the field at its commencement. Vince Hilaire of Crystal Palace pushed over a referee and was found guilty by a disciplinary tribunal of bringing the game into disrepute. Charlie George of Southampton was disciplined by his club and fined by local magistrates for assaulting a photographer at the Norwich City ground; and the law and sport merged dramatically when a police officer marched onto the field at Colchester to remonstrate about a defender's verbal chastisement of his own goalkeeper. This occasion was not without precedent. In the late 1960's, a visiting player at Portsmouth made rude signs during an FA cup tie which could have incited crowd disturbances. A local policeman, on that occasion, attempted to object too. Each time the referee complained, but forgot how the law of the land transcends the field of play; and both referees could have been at risk for obstructing the respective police officers in the execution of their duty."⁹⁶

As a result of one of the incidents, Charlie George, former England international, then of Southampton (and famed for

his elevation from the North Bank terraces to a popular player at Arsenal) was fined £400 for hitting a press photographer in a game against Norwich City in September, 1980. George "admitted threatening behaviour likely to cause breach of the peace."⁹⁷ This increased surveillance and regulation of players behaviour on the pitch was not simply the result of a few 'over-zealous' policemen; it was part of a 'programme' of wider regulation of the behaviour of professional players which culminated in attempts by first the Football Association,⁹⁸ and, then, F.I.F.A.⁹⁹ to ban 'outbursts of emotion' on the field. The F.A.'s 16 point memo to League clubs, it was claimed, was designed to "help improve the game's image and cool tempers on the terraces".¹⁰⁰ Amongst many other recommendations, it said that "excessive shows of exuberance when goals are scored should be discouraged," specifically calling for players to stop running to the crowd in jubilation when they had scored a goal, eliminating arm-waving and fist-clenching poses. The F.A. recommendation was regarded with ridicule throughout the football industry and one club captain (and P.F.A. representative) told me that he had pinned the notice up, but that it had simply curled up at the ends and become unreadable (and unread)! It was perhaps an apt testament to the Football Association's farcical attempts at regulating the so-called over-'enthusiasm' of the players, which the F.A. saw as incitement to crowd disturbances.¹⁰² Police spokesmen, too, have joined the fray, however, and despite the general danger of a flood of unwarranted legal cases¹⁰³ there have been stern warnings¹⁰⁴ that soccer players who break the law on the pitch could be taken to court.¹⁰⁵ In 1982, South Yorkshire's Chief Constable issued a three-point guideline to players in his region which said "Don't provoke spectators; don't show dissent; play the game in

the proper spirit".¹⁰⁶ He warned that "if players break the law, they will be taken to court"¹⁰⁷ and that those "who misbehave but don't commit a crime would also be in trouble as they would be reported to their clubs and police would ask for disciplinary action."¹⁰⁸ The basis for such calls for discipline from such a variety of sources in the 1980's is the 'theory' that players' behaviour influences the phenomenon of soccer hooliganism.

The exact nature of the relationship between behaviour on the field and behaviour by supporters has always been somewhat subject to speculative thought of the fantasy variety, although journalists like Hopcraft,¹⁰⁹ amongst others,¹¹⁰ have suggested that crowd behaviour is DIRECTLY influenced by behaviour and play by professional footballers. Some even go further in their assertions:

" . . . it is almost beyond argument
now that violence on the pitch inflames
trouble on the terraces"¹¹¹

claimed Jeff Powell of the Daily Mail in 1980. On the contrary the causal nature of such a relationship is far from being generally established. What is clear however is the increasing perception of the behaviour of both players and spectators (particularly on the terraces) as a 'problem' for the football industry, which has taken place in recent years. A marked example of the beginning of such a campaign of surveillance within the game was in 1974 at the biennial congress of the European Union of Football Associations (UEFA) held in Edinburgh. The congress resolved to:

" . . . intensify their campaign against
indiscipline by players and spectators."¹¹²

At the same time Mr. John McCluskey QC, then Solicitor-General for Scotland, gave a stern warning that unless football authorities put their house in order, prosecutions for criminal assault, following incidents on the field,

would be inevitable. In the following year, after much discussion following the Wheatley Report¹¹³ on crowd safety in 1972 (itself the result of the disaster at Ibrox Park, Glasgow in the previous year) the SAFETY OF SPORTS GROUNDS ACT, 1975 passed through parliament. The effect¹¹⁴ of this legislation, and its guidelines¹¹⁵ - though ostensibly confined to licensing of football grounds on safety criteria - was to contribute to the continuing process of redefinition of the football audience, from a committed crowd to transitory one,¹¹⁶ from predominantly skilled working class to (more) middle class.¹¹⁷ The effect of the law has been to aid the increased surveillance (already in operation) by ordinary and 'elite' police squads (for instance, T.A.G. or Tactical Aid Group in Manchester) and closed-circuit television (where operated) of the terrace supporters within and around the grounds. Difficulties with the content¹¹⁸ and scope¹¹⁹ of the legislation have been experienced, but it is the clear conclusion of my observations as part of the field work for this thesis that this apparently 'innocent' law has been a crucial force behind the movement to segregate and monitor one section of the English football crowd - that is the terraces. It is a process which is now seen as part of the repackaging of football, remarketing it for a non-"hooligan" audience as Jimmy Hill, former Chairman of Coventry City has recently put it, although Hill's own solution at Coventry, which was to institute the first all-seater stadium in the Football League has backfired somewhat.¹²⁰ The debate about segregating terrace supporters had been in motion for some time before the 1975 Act was passed: for example, Denis Howell, then Minister of Sport, urged in 1974 that football terraces must be split into sections to stop hooligans getting on to the pitch. Howell chaired the government working party on crowd safety at this period,

and the legislation undoubtedly followed from such considerations. It was not merely safety that was at issue; the behaviour of spectators on the terraces was seen to be in urgent need of regulation. 'Architectural'¹²¹ solutions, including the speeding up of the provision of all-seater stadiums, were widely propagated in 1974 and 1975. The Act appeared as a 'natural' outcome of 'sensible' discussions about 'rioters' at football grounds. It was Manchester United 'football hooligans', in particular, in the 1970's who became more than mere 'folk devils' around which 'moral panics' were created, and came to play a significant part in the drama of policing football in contemporary Britain. Their highly publicised invasion of the pitch after a home game with Manchester City in April 1974 - which caused the game to be abandoned and, since United were losing, confirmed that the home team were to be relegated to Division 2 - was the occasion for renewed calls for "seats for rioters" and demonstrated clearly that the pitch invaders were a large minority and, what is more, easily identifiable and "normally monopolise specific areas of the ground."¹²² By 1976 it was common for newspapers to call for the return of corporal punishment¹²³ and to campaign for ticket bans¹²⁴ as specific solutions to the 'problem' of United's "hooligan element", and soccer violence in general. Of course Manchester United 'football hooligans' were not the only figures in the 'public' debate about vandalism and violence in the 1970's - Spurs' fans' exploits in Rotterdam in May 1974 in the second leg of the UEFA Cup Final¹²⁵ and Glasgow Rangers' supporters 'friendly' trip to Aston Villa in October 1976¹²⁶ earned them a notoriety which has been matched only by the fans of Chelsea and Leeds United in later years. However, such 'figures' are social constructions of a highly medicated kind. As Garry Whannel has argued in conclusion to a

rigorous account of mass media treatment of football hooliganism in Britain:

"The structuring process of public discussion has constructed two figures around which the debate is formed: the FOOTBALL HOOLIGAN and the FAMILY AUDIENCE. The hooligan took its place within an increasingly formalised mode of explanation; the label HOOLIGAN came to reference a whole section of the terrace sub-culture.

The FAMILY AUDIENCE only makes full sense if it is understood to reference the affluent middle class consumer. The presence in development plans of squash courts, hair-dressing salons, executive boxes and expensive restaurants indicates that football clubs are increasingly looking to the top end of their market for economic salvation.

What is significant here for the concept of deviance labelling is that the folk devil FOOTBALL HOOLIGAN does not simply become part of a law-enforcement induced amplification as a figure in a more general discourse, the real basis of which remains unspoken."¹²⁷

In fact it proved to be part of a larger process of regulation of both players and spectators, in which the football authorities, clubs and mass media, especially, could be seen as re-defining the audience of football. This process of redefinition of the football audience by the mass media has been seen to occur specifically in television,¹²⁸ but in my view it is the rules of the law itself and its

consequent enforcement by clubs/police which has had the major effect in the development of surveillance of terrace-culture. It has contributed to the 'caging' of that culture, particularly the young, by penning them in, thus making it easier for surveillance and regulation to take place. Much police removal of alleged 'provocateurs' is quite arbitrary, made considerably easier since the enforcement of the 1975 Act by the smaller terrace area created. Further, legislation in Scotland - the CRIMINAL JUSTICE (SCOTLAND) ACT, 1980 - extended surveillance of supporters to such an extent that it is now an offence to carry drink or alcohol on a coach travelling to or from a sporting event, or to attempt to enter a ground drunk or in possession of alcohol.¹²⁹ The extension of such laws to England and Wales in the relatively near future can in no way be ruled out, especially in the light of the Football Association's frequently expressed intention to regulate (including banning entirely) the sale of alcohol to football supporters.

I have been concerned to explain in this Chapter the nature of the private power which football clubs, the Football Association and the Football League have over the player, his representative body (the P.F.A.) and, to some extent, the supporter of professional football. This private power has always been in existence since the beginning of the professional game in England and Wales, but in the period following the so-called "football revolution" in 1960's, the age of increased 'freedom' for players and the new, discriminating 'consumer' of popular leisure, the surveillance and regulation has been developed apace. Neither is it simply a question of social, 'public' regulation operating through criminal and civil law coming together with 'private' regulation by clubs, F.A. and League at a particular 'moment' in the history of

the game. Foucault's notion of discipline allows us to conceive of an alternative to the classical liberal viewpoint which underlies the English legal system and separates law off as part of a "strictly limited public 'political' sphere."¹³⁰ On the contrary, for Foucault, legal regulation is part of disciplinary government which straddles both, (normally regarded as separate), 'public' and 'private' spheres. As Hirst and Woolley indicate:

"Social organisation cannot leave families and individuals to their own devices; 'government' is as necessary in the 'private' sphere as elsewhere (although it need not be organised by the state)."¹³¹

Talk of 'public regulation' of 'private activity' in this context¹³² is merely confusing the issue. Recently, the English judiciary has also involved itself in this kind of misleading discourse, establishing that football stadia would be endowed, by judicial edict, with the label "public places"¹³³ and furthermore, that private control over such 'public places' would extend to the granting of injunctions to football clubs restraining those who are banned from the ground as a result of disturbances from entering until the club sees fit.¹³⁴ The development of recent statutory intervention in this field, the SAFETY OF SPORTS GROUNDS ACT 1975, has reinforced such disciplinary 'government' over the action within football grounds so that limited liability company control over 'private property' (the spectator as well as the player effectively becomes private property when inside the ground) is almost total. The recent extension of disciplinary power in the industry has added further tantalising dimensions to an already century-old process.

REFERENCES

1. Dougan: DOOG, op. cit., page 3.
2. Trevor Brooking: TREVOR BROOKING (Granada, 1982), pages 15-16.
3. For an examination of some issues in the post-war period see my essay: "Some Aspects of Legal Regulation in the Post-War Football Industry" in Tomlinson (ed), op. cit.
4. "Part of the Union or the Mill Owners' Charter" in Nickolds and Hey (eds), op. cit., page 38.
5. Dougan and Young, op. cit., page 99; Chester Report, op. cit., page 65; Dougan: DOOG, op. cit., page 2 says that the percentage who fail by the age of 22 is about 80%.
6. op. cit., page 26.
7. ibid., pages 26-27.
8. Guthrie op. cit., pages 64-65.
9. Douglas, op. cit., page 61.
10. Source: interview, op. cit.
11. Guthrie, op. cit., page 63 and Ch. 4.
12. see Chapter 4 of this thesis, above.
13. This, of course, does not prevent individual players being involved in their own private occupational pension arrangements, which many do take advantage of, and these are often also organised by the P.F.A. with certain insurance companies.
14. letter from Gordon Taylor, 26th August 1981.
15. because it only provided "peanuts", in the words of one player I interviewed.
17. The late Bob Kerry is the only occupant of this post so far.
18. Dougan and Young, op. cit., page 63.
19. reported in The GUARDIAN August 5th, 1980.
20. see for instance, Eamon Dunphy (with Peter Ball):

ONLY A GAME? The Diary of A Professional Footballer, op. cit. ; Dougan: DOOG op. cit.; Dougan: HOW NOT TO RUN FOOTBALL op. cit.; Best, op. cit.; Hopcraft, op. cit., Chapter 1.

21. virtually no other employer still uses fines as 'punishment' today.
22. C.I.R. Report, op. cit., page 46.
23. *ibid.*, pages 43-44, for a review of the system in the mid-70's.
24. Dougan and Young, op. cit., page 102.
25. set up in 1972 with Sir John Lang as Chairman to hear appeals from F.A. disciplinary commission hearings.
26. managers also sometimes accompany players for field disciplinary hearings. The P.F.A. only acts as representative if the player requests it. One celebrated example in 1981 was the P.F.A.'s successful representation in the appeal of Kevin Bond against a fine by his then club Norwich City, for failing to report for treatment on an injury. See Peter Johnson: "Bond Wins Exit Visa!" in The DAILY MAIL January 21st, 1981.
27. Dougan: HOW NOT TO RUN FOOTBALL op. cit., pages 131-132.
29. see note 25 above. As new procedures developed this tribunal of final appeal was abandoned. There is now no internal administrative appeal from a F.A. disciplinary commission hearing, though players can request a personal hearing if the charge is under Rule 35 (a) (viii) "bringing the game into disrepute"; see Rule 35(c) of the Rules of the Football Association, in THE FOOTBALL ASSOCIATION HANDBOOK: Season 1981-1982; Rules of the Association and Laws of the Game (Football Association, 1981).
30. MACHIN v. THE FOOTBALL ASSOCIATION LTD (1973) The TIMES July 21.

31. see Brian Scovell: "Robinson ban after F.A. trial by TV" in *The DAILY MAIL* February 18th, 1983.
32. see Appendix 'Disciplinary Procedures Concerning Field Offences' in *F.A. HANDBOOK*, op. cit., page 325-329.
33. interview, op. cit.
34. see Butler, op. cit.
35. see, for instance, Appendix 3, Section 13. The first 'test case' appeal on this issue was Peter Barnes of Leeds; see Bill Mallinson: "Test For Barnes!" in *The DAILY MAIL* February 11th, 1982. Barnes LOST his appeal to the FLMC, on February 12th, 1982.
36. see C.I.R. Report, op. cit., page 46. The Report notes that "outdated" rule books are frequently treated flexibly in practice.
37. at a number of clubs I visited such committees considered offences of dissent on the field. The rationale behind the idea was that the whole team suffered if players were banned by the F.A. for such offences and club fines were thus seen as a deterrent; apparently, in most cases, a very effective one since such offences dropped dramatically where such committees existed.
38. for a discussion of the private/public dichotomy in the legal regulation of football, see, also, my paper: "Private Control, 'Public Places' and Private Property: The Development of a Disciplined Workforce and a Passive Audience for Professional Football in England 1863-1980", Working Paper, School of Law, University of Warwick, November 1980.
39. ex-Arsenal player Liam Brady in his autobiography *SO FAR, SO GOOD* (Stanley Paul, 1980) described himself as a "business commodity", employed by a business which in terms of comparison with other business

- giants can be ruthless, cruel and totally money-orientated". See "Book Review of Liam Brady: SO FAR, SO GOOD" in The GUARDIAN February 9th, 1981.
40. for instance, see Zen Bankowski: "Does Law Make Footballers Free?", unpublished paper read to a Socio-legal seminar, Department of Public Law, University of Edinburgh, November 19th, 1974; also on 'alienation' of players as commodities, see Vinnai, op. cit.
 41. Pat Carlen: "Radical Criminology, Penal Politics and The Rule of Law" in Pat Carlen and Mike Colli son (eds): RADICAL ISSUES IN CRIMINOLOGY, op. cit., page 15.
 42. ibid., page 15.
 43. although the 1979 and 1983 Conservative Governments have attempted to bring it back into fashion; see Stuart Weir: "Bosses on the Ball" in NEW SOCIALIST No. 7 1982, page 36.
 44. ibid., page 36.
 45. Granada TV: "CITY!", transcript of programme screened in January 1981, and then again on the eve of the F.A. Cup Final in May 1981.
 46. ibid.
 47. op. cit., page 52.
 48. Tony Mason: " 'What a load of . . . ' : Book Review of Desmond Morris: THE SOCCER TRIBE" in NEW SOCIETY September 24th, 1981.
 49. Frank Keating: "Pop Sociology From The Boardroom" in The GUARDIAN September 25th, 1981.
 50. (Johnathan Cape, 1981).
 51. see extract from the above in The OBSERVER MAGAZINE September 13th, 1981, page 41.
 52. ibid., page 41.
 53. Peter Marsh, a former colleague of Morris on the Oxford United board of directors, has contributed

more refined social psychological - but still profoundly unsatisfactory - studies of football, particularly of spectators. See, for example, Peter Marsh, Elizabeth Rosser and Rom Harr  : THE RULES OF DISORDER, (Routledge and Kegan Paul, 1978) especially Ch. 1,3, 4 and 5. For an appreciation, see Frank Keating: "Marsh rules - OK by me" in The GUARDIAN March 2nd, 1978.

54. op. cit.
55. op. cit.
56. National Deviancy Conference (NDC)/Conference of Socialist Economists (CSE): CAPITALISM AND THE RULE OF LAW: From Deviancy Theory To Marxism (Hutchinson, 1979), which is a collection of papers from an NDC/CSE conference originally called "Capitalist Discipline and the Rule of Law" (my emphasis); See, especially Ch. 5 and Ch. 6. See also, Dario Melossi: "Strategies For Social Control in Capitalism: A Comment on Recent Work" in CONTEMPORARY CRISES: Crime, Law and Social Policy, Vol. 4, 1980, and Dario Melossi and Massimo Pavarini: THE PRISON AND THE FACTORY (Macmillan, 1981).
57. "Afterword" in Foucault: POWER/KNOWLEDGE, op. cit., pages 233-234 and 237.
58. see ibid., Ch.3 "Body/Power" a reprinted interview from QUEL CORPS? - a marxist journal on physical education and sport. It might be interesting to speculate on how Foucauldian approaches might be developed in analyses of the social functions of sport in general. Jennifer Hargreaves, op. cit., also makes this point in relation to the interview with Foucault.
59. Peter Dews: "The NOUVELLE PHILOSOPHIE and Foucault" in ECONOMY AND SOCIETY Vol. 8 No. 2, 1979, has also

gone to great lengths to point out the political and theoretical links with the 'Nouvelle Philosophie' which is seen as an aspect of the recent 'swing to right' in French intellectual culture. This attempt to render Foucault guilty by recent association with non-and anti-Marxists fails to take into account Foucault's long-standing dialogue with Marxism, and particularly that brand practiced by the French Communist Party (PCF) since the mid-1960's. See Alan Sheridan: MICHEL FOUCAULT: The Will To Truth (Tavistock, 1980), especially the conclusion.

60. "On Struggle in the Enterprise" in Mike Prior (ed): THE POPULAR AND THE POLITICAL: Essays on Socialism in the 1980's (Routledge and Kegan Paul, 1981), page 63.
61. *ibid.*, pages 63-64.
62. *ibid.*, page 64.
63. *ibid.*, page 64.
64. see Chapter 6 of this thesis.
65. Hirst: "Law, Socialism and Rights" in Carlen and Colli son^(eds), op. cit., considers some of the problems for socialist regimes, given the necessity of 'disciplinarity'.
66. see Melossi and Pavarini, op. cit., for instance.
67. see, for instance, his study of madness.
68. see DISCIPLINE AND PUNISH, op. cit.
69. Paul Hirst and Penny Woolley: SOCIAL RELATIONS AND HUMAN ATTRIBUTES (Tavistock, 1981), page 189.
70. *ibid.*, page 189.
71. Taylor, op. cit., quotes Clough in his first managerial job at Hartlepool as saying "In this business you've got to be a dictator, or you haven't a chance."
72. see Jeff Powell: "Forest Reach For The Sky" in The DAILY MAIL August 29th, 1981. Peter Taylor was

quoted in the article as saying "we're taking medical advice on how far we can go." Such training disciplines have echoes of an earlier "Taylorism" (!!) which in Vinnai's view, op. cit., pages 36-37, sport, and especially football, makes use of in order to "fit people for the operation of machines, by training techniques that reduce body and soul to the status of a machine."

73. Simon Frith: "Youth in the Eighties: A Dispossessed Generation" in MARXISM TODAY November, 1981.
74. see Simon Frith: SOUND EFFECTS: Youth, Leisure and the Politics of Rock 'n' Roll (Constable, 1983), Ch. 11, especially pages 258-259.
75. Green Paper: REVIEW OF THE PUBLIC ORDER ACT, 1936 AND RELATED LEGISLATION (Cmnd. 7891, Hmso 1980).
76. see especially Judith Judd: "Brixton: Riot Law Review" in The OBSERVER May 3rd, 1981.
77. see Jacques Donzelot: THE POLICING OF FAMILIES (Hutchinson, 1980).
78. see Stuart Hall: "Notes on Deconstructing 'the Popular'" in Raphael Samuel (ed): PEOPLE'S HISTORY AND SOCIALIST THEORY (Routledge and Kegan Paul, 1981).
79. ibid., page 229.
80. op. cit., page 24.
81. William Baker: "The Making of a Working Class Football Culture in Victorian England" in the JOURNAL OF SOCIAL HISTORY Vol. 13 No. 2, 1979.
82. Cunningham. op. cit., page 58.
83. ibid., page 58.
84. Geoff Pearson: "A Jekyll in the Classroom, A Hyde in the Street" in Robert Adams, Geoff Pearson and Steve Redhead (eds): FOOTBALL IN DECLINE? (forthcoming).
85. Colin Gordon: "Other Inquisitions" in I and C No. 6, 1979, page 38 (n.b. this article was based on

the 'Afterword' to Foucault: POWER/KNOWLEDGE, op. cit.).

86. see Paul Hirst: "The Genesis of the Social" in POLITICS AND POWER No. 3, 1981.
87. ibid., page 67.
88. see Colin Gordon: "Introduction to Pasquino and Procacci" in IDEOLOGY AND CONSCIOUSNESS No. 4, 1978:
89. see Beverley Brown: "Private Faces in Public Places" in I andC No. 7, 1980, for an exploration of this theme in the area of obscenity, sexuality and the law.
90. THIS ONE'S ON ME (Coronet, 1980), page 143.
91. ibid., page 18.
92. quoted in **The** NEWS OF THE WORLD August 23rd, 1981.
93. ~~For~~ example, on May 2nd, 1924 several Stoke City players were alleged to have wrenched a door off its hinges, smashed electric lights and pictures and caused a disturbance. The BURTON DAILY MAIL of May 3rd, 1924 stated that the trouble was due to the fact that some of the players were not likely to be signed on again, and others expressed dissatisfaction at the terms offered them. I am grateful to Andy Ward for bringing this incident and its source to my attention; though it is by no means an isolated example, it is surprising for its "collective" response to problems which normally evoke an "individualist" response in the football industry.
94. I am again grateful to Andy Ward for allowing me to 'eavesdrop' on his father's reminiscences.
95. Grayson in Rollin (ed): ROTHMAN'S FOOTBALL YEARBOOK 1982-3. op. cit., page 34, noted the civil case, then in progress, of a Scottish League player claiming

damages from an opponent who, it was alleged, caused him to break his leg; the case was the first of its kind in professional football. The eventual outcome of the legal action which involved former captain of Dunfermline Athletic and Scottish international Jim Brown who claimed £30,000 damages over a tackle by John Pelosi of St. Johnstone in October 1981, was settled out of court in December 1983. See "Ex-soccer captain wins tackle damages" in The GUARDIAN December 7th, 1983.

96. in Rollin (ed): ROTHMAN'S FOOTBALL YEARBOOK 1981-2, op. cit., page 19.
97. "Footballer fined £400" in The GUARDIAN December 10th, 1980.
98. Bryan Brett: "FA in 'cool it' call to Scorers" in The MANCHESTER EVENING NEWS February 11th, 1981. As we noted in Ch. 3 Pearson: HOOLIGAN: A History of Respectable Fears, notes the same sort of FA action in the 1920's and 1930's.
99. Charles Burgess: "The Kissing Must Stop" in The GUARDIAN September 30th, 1981.
100. Brett, op. cit.
101. It was 'symbolically' significant that Professor Sir Harold Thompson retired soon afterwards and F.A. ('Bert') Millichip, a known 'hard liner' on player and crowd discipline and pro-corporal punishment was elected as the new F.A. Chairman. See David Lacey: "Millichip Takes The Chair" in The GUARDIAN June 29th, 1981 and "Millichip To Lead F.A." in The OBSERVER June 28th, 1981.
102. Many journalists and commentators on football's problems, however saw the F.A. proposals as, generally welcome, if overstated somewhat. See Jeff Powell: "Soccer's Top Men Must Think Again On Violence" in The DAILY

MAIL December 6th, 1980.

103. for instance, an insurance company's scheme to help referees prosecute anyone who attacks them on the field - player or spectator - or while travelling to or from a game, was criticised because it "could start a flood of legal cases which do not warrant going to court"; see Robert Armstrong: "Referees reject insurers hand" in The GUARDIAN March 5th, 1981.
104. see Patrick Mulchrone: "Hooligan players curb hailed" in The MANCHESTER EVENING NEWS November 2nd, 1982.
105. This has also occurred in Scotland; The GUARDIAN March 3rd, 1983, reported that Davie Cooper of Rangers F.C. was to appear in Falkirk Sherriff Court on March 10th, 1983 after the procurator fiscal brought a charge of "reckless conduct" following an incident in a Falkirk v. Rangers Cup Tie where Cooper was alleged to have thrown a coin or similar object which struck a 14 year old boy in the crowd.
106. quoted in Mulchrone, op. cit.
107. ibid.
108. ibid., Police Federation spokesmen in both Greater Manchester and South Yorkshire area strongly supported the Chief Constable's warning.
109. op. cit., pages 154-155.
110. Hugh McIlvanney of the The OBSERVER has also emphasised the relationship between on-the-field action and violence on the terraces, though he claimed that it was the exception rather than the rule in an article he wrote for the paper in 1974 "Time To Give Football Back to the Public".
11. Jeff Powell: "Soccer's Top Men Must Think Again on Violence" in The DAILY MAIL op. cit.

112. "UEFA attack on indiscipline to be strengthened" in
The GUARDIAN May 23rd, 1974.
113. Report of the Inquiry Into Crowd Safety at Sports
Grounds (Cmnd 4952, Hmsc 1972).
114. for some useful details on the practical implementation
of the Act in an unhelpful economic theory framework,
see Mark Graham: "Football Hooliganism: An Economic
Approach" (unpublished paper, Herriott-Watt University,
Edinburgh, 1979). I am grateful to Mark Graham for
a copy of his paper.
115. eg. GUIDE TO SAFETY AT SPORTS GROUNDS (Football),
(Hmso, 1976).
116. see Geoffrey Nowell-Smith: "Television - Football -
The World" in SCREEN Vol. 19 No. 2, 1978/1979.
117. see "Social Trends: Football - Our Most Popular
Sport" in NEW SOCIETY October 23rd, 1980.
118. John Woodcock and Mervyn Edgecombe: "Tougher rules
might have saved death-gate victims" in The DAILY
MAIL January 15th, 1980.
119. David Lacey: "The Unacceptable Face of Football" in
The GUARDIAN January 16th, 1980, stresses the
difficulties of ensuring strict surveillance OUTSIDE
the ground.
120. see Paul Johnson: "Soccer Hooligans Rip Up All-Seater
Stadium" in The GUARDIAN September 14th, 1981.
121. Robert Adams: "The Stoneton Lads and Football Crowd
Control and Resistance at Leeds United", unpublished
seminar paper to Academic Forum, College of Ripon
and York St John, York (Feb., 1980), likens the
architecture of Elland Road, Leeds to a "security
prison" and used the term "Panopticonality" to
describe the leisure surveillance of Saturday
afternoon. There are, it seems, a number of links

- between Jeremy Bentham's Utopian programme "The Panopticon" (see Foucault's discussion in DISCIPLINE AND PUNISH, op. cit.) and the architecture of football grounds as it has been reconstructed, with the help of the 1975 Act, in the 1970's and 1980's.
122. a letter from Mr. Richard Trendall, Beckenham, Kent to ~~The~~ GUARDIAN in response to the then Guardian football correspondent, Eric Todd's, match report on the United v. City match. In the immediately following away game at Stoke City, United supporters were reported to have set fire to the terraces, and weapons such as a steel hatchet and 1ft. long knife were confiscated by police. On the afternoon of the game at Stoke, Dennis Howell said in a BBC radio interview that football terraces must be split into sections to stop hooligans getting onto the pitch.
 - 123... Bill Grundy: "Why the birch is the only answer" in The DAILY MIRROR November 23rd, 1976.
 124. Frank McGhee: "The Final of Fear" in The DAILY MIRROR April 13th, 1976.
 125. Harry Miller: "Football Fans Run Riot" in The DAILY MIRROR May 30th, 1974.
 126. Philip Jordan: "Time For a Penalty?" in The GUARDIAN October 11th, 1976.
 127. Garry Whannel: "Football, Crowd Behaviour and the Press" in MEDIA CULTURE AND SOCIETY Vol. 1 No. 2, 1979, page 342. For an excellent account of the figure of the hooligan in historical discourses about 'law and order' see Pearson: HOOLIGAN: A History of Respectable Fears, op. cit.
 128. Edward Buscombe (ed): FOOTBALL ON TELEVISION (British Film Institute, 1975). For a sceptical review of such 'discourse analysis' see: "Soccer Close-Up" in NEW SOCIETY August 28th, 1975.

129. Peter Hetherington: "Whistle Blows on Scottish Hooligans" in *The GUARDIAN* January 8th, 1981.
130. Hirst and Woolley, op. cit., page 193.
131. ibid., page 193.
132. Elliott, in Nevill Turner and Jenkins, (eds) op. cit., accepts a conventional public/private distinction in his analysis of 'public' (common law) regulation of and essentially 'private activity'. Disclaimers like "the problem of why, or whether or how law should control sport is a sociological one, and not one that a lawyer can discuss in depth" (page 18) should not blind us to the fact that specific explanation of how law "might control sport" is being advanced in the text, relying on the notion of law as 'public' activity.
133. CAWLEY v. FROST (1977) 64 C.A.R. 20; see Grayson: SPORT AND THE LAW, op. cit., page 28.
134. BRISTOL CITY FOOTBALL CLUB v. MILKINS (1978) *The DAILY TELEGRAPH* January 31, 1978, page 3.

CHAPTER 6: FOOTBALLERS' RIGHTS AND LEGAL RECOGNITION

" . . . there is no general answer to the question of whether rights should be secured in law."¹

"There are no general forms of recognition and hence it is always a question of particular statuses and their construction/ recognition . . . A professional status, for example, will be a bundle of different forms of recognition."²

In Chapter 1 of this thesis I considered, in brief outline, some of the recent developments in the theoretical interrogation of legal effectivity and legal subjectivity. In Chapter 4 and Chapter 5 of this thesis the bulk of the 'empirical' research carried out between 1974-83 has been presented and discussed. The argument put forward is that just as in the first 'emancipation' of the professional footballer in 1885 where the outcast was transformed into cultural commodity but with highly restrictive shackles and chains introduced at the same time, the supposed watershed of the early 1960's (the second 'emancipation') is also contradictory. At the very moment of change, in both cases, came a massive de-limitation of the apparent freedom. In this Chapter I want to examine in more depth the theoretical issues implied by the material I have presented on the formation of the professional footballer as a legal subject, through the past century or so. In other words, the question of what, precisely, is involved in the socio-historical process of the LEGALISATION of the professional footballer will be the focus of what follows. In the preceding pages, I have established that the legalisation of the professional footballer is not a single, once and for all, act of legislation,

but a process which up to the present day has absorbed a century without yet reaching its 'zenith'. Moreover, it is not a teleological, evolutionary process but one which owes as much to discontinuity and rupture as continuity and progression. The actual legal approval of professionalism in England was merely the first step in 'recognising' the professional player employed by football clubs (whether professional or semi-professional) as a legal subject with a particular status in law, having specific rights, duties, capacities and attributes. Compared to many other employees over the same historical period, professional footballers have been denied in law and in practice, certain widespread 'rights' in English law - for example, 'freedom of movement', 'unlimited' wages contracts, and so on: albeit, rights which have been steadily gained, in some limited form, since the early 1960's. Too much, it has been argued in this thesis, can be made of the comparison with other industries. For instance, footballers are not the only employees whose contracts have been subject to severe regulation and control in modern society. Nevertheless, the position which has been eventually reached after almost a century of struggle is still far from being akin to that of the majority of employees in Britain in the late twentieth century. The transfer system, though shorn of its restrictive retention provisions, still give rise to many of the problems previously designated in the period before the abolition of the maximum wage as 'soccer slavery', and many aspects of the everyday lives of players are infused with a paternalism which is reminiscent of feudalism in its ties with club and controlling authorities.

THE ROLE OF LAW IN STRATEGIES FOR CHANGE IN THE FOOTBALL INDUSTRY

Where then does this leave the role of law and

'legalistic' strategies for change in the football industry which might further 'free' the professional footballer from his 'shackles and chains'? Attitudes to using the law to effect changes in the industrial relations of football have varied considerably. For instance, Sir John Wood, a member of the C.I.R. which reported on the game's industrial relations in 1974, has stated, in connection with employment in general and soccer in particular that:

"If collective bargaining is properly structured with sound institutions and good procedures it should be able to deal with almost all the problems and tensions that can arise. Only rarely, and in the most intractable circumstances, need there be recourse to law."³

This familiar argument, in favour of 'voluntarism', has found much favour with the participants in football's employee/employer relations over the past century. Perhaps the most significant justification for the position is that explained by Wood:

" . . . the use of the courts to solve disputes that arise can lead to very expensive and adversely publicised wrangles that fail to solve the underlying tensions. Occasionally this approach undoubtedly leads to progress - but . . . that progress is both too long delayed and unnecessarily disruptive if it has to be achieved in this way."⁴

Certainly, in the case of 'freedom of contract' the Players' Union, deterred by the failure in the KINGABY court case, did not take the issue to courts for another fifty years. This 'abstentionist' view of industrial relations has frequently held within the Union, and undoubtedly this has

been the source for much of the criticism launched against the players' organisation, during its history, for being weak and deferential towards the football authorities and employers.⁵ Taking different periods of the union's history, there is, as we have seen, evidence to suggest that under the influence and chairmanship of men like Charlie Roberts, in the early twentieth century, and later of Jimmy Guthrie after World War II, the players' body has been less deferential and more like a conventional (even 'militant') industrial trade union than in the period between the wars, or, some would argue, in the era immediately following the abolition of the maximum wage. Whatever the reasons, however, for the reluctance to become involved in legal wrangles, the effect of voluntarism/abstentionism has been to perpetuate illegal and restrictive conditions of employment, as far as the individual professional footballer is concerned. As we have seen, professionalism was itself legalised only in limited form in the early days, and what are highly dubious practices, legally, have persisted ever since. The legal position of the professional player has been, then, one of partial legalisation. Thus it is misleading, as has already been indicated in earlier Chapters, to present the movement of the 'footballer as legal subject' as one of illegality prior to 1885 and of increasing freedom after that year, capped by the granting of 'freedom of contract' by the League clubs in 1978. In fact, the period has ended up with the suspect legal device of the transfer system still holding sway; and ALL THE WAY through this historical process, illegal, and other restrictive, controls have continued to plague the player as a result of the abstentionist stance adopted at various periods of the union's history. After all, even following the EASTHAM v NEWCASTLE UTD F.C. court case, when victory had supposedly been won, employment relations carried on

SUBSTANTIALLY unaltered until the 1978 agreement.

More radical analyses of the game's structure than those espoused by Wood, have tended to stress the control of football by the middle and upper classes⁶ leaving little space for consideration of the possibilities of legal struggles and strategies for change based around law. Critcher, for instance, ends his analysis of 'football since the war' with the comment that:

"the susceptibility of football to the financial dictates, consumer ideologies and cultural definition of advanced monopoly capitalism may be revelatory of weaknesses inherent in the traditional corporate working class culture. The need, in football as elsewhere, may be to take control."⁷

Bankowski,⁸ too, has argued that although "the law is important because it makes the footballer to some extent at least a 'free' agent and so gives him the conditions to fight for freedom" and that "more victories over retain and transfer are needed in the courts", they are, nevertheless, needed "not so much to win the legal victory but to show that the clubs, the League and the F.A. can be defeated". He concludes that it is important that players "identify themselves more closely with workers' movements outside of football . . . For it is only then that they can begin the fight for freedom."⁹

However, such radical analyses rely, ultimately, on a theory of law as alienation or fetishised form similar to Marx's theory of fetishism, or alienation, of commodities outlined in CAPITAL, Vol. I. We have criticised such analyses as being unsatisfactory on the grounds referred to in Chapter 1 of this thesis. As Cotterrell has strongly contended:

"Such a view must be rejected.

Legal forms and the characteristics of legal doctrine and discourse cannot be wholly explained by reference to matters external to legal processes themselves."¹⁰

The insistence that law must be treated seriously, as having an independent effectivity has been extended by Bernard Edelman in *OWNERSHIP OF THE IMAGE* into a concrete analysis of the historical development of the French law of photography and the cinema, though its utilisation of Althusser's notion of "interpellation" of subjects, in an uncritical manner, as we have already noted, renders his study, at the very least, somewhat questionable. Nevertheless, it is possible to challenge the arguments of Bankowski, Critcher and others on the development of footballers' rights from an alternative perspective. This challenge revolves around objections to the claim that legal victories over retain and transfer, disciplinary control or whatever issue is pertinent, are only 'symbolic'. Such a mistaken claim rests on the belief that there is an already existing socio-political space, somehow outside the legal sphere, which may bring about the condition of 'freedom'. This is a libertarian fallacy, and must be rejected here, for law helps to construct conditions for political and social struggle; law is in no sense separate from social and political formations. The theoretical positions against which this libertarianism pitches itself are, however, also equally clearly to be rejected. Elsewhere, Edelman¹¹ has correctly argued very strongly indeed against the "illusion of supposing that 'freedom is transformed into rights'", and has criticised what he calls "bourgeois humanism" and "Stalinist humanism" for their shared prophecies of "legal man enjoying the unanimously agreed rights of man in an atmosphere of freedom from political class struggles."¹² Law, from our perspective then, is not merely a facade or mask, nor is it a limited 'real form', the essence of

which is to be discovered in deeper relations elsewhere in any social formation. It is not possible simply to say that the professional footballer's claims for 'freedom' can be guaranteed by the revolutionary transformation of a society - and hence the relations of the industry - anymore than it can be ushered in merely by the juridic and official¹³ discourse of the past century. On the contrary, "law is always an arena for struggle."¹⁴

However, we have, at this point, to carefully consider the meaning of such a phrase. What does it mean to claim ~~that~~ law is an arena of struggle? Marxists of such, apparently, different allegiances as Bernard Edelman and Edward Thompson¹⁵ have heralded it as being opposite in recent years. Yet on the precise questions of how professional football's legal wrangles can amount to such a state of affairs, much caution must be exercised; as is clear from Edelman's work, *THE LEGALISATION OF THE WORKING CLASS*,¹⁶ which considers the effects of the granting of legal rights, such as the right to strike,¹⁷ to the French "working class", and the means by which Edelman considers that the "working class" has been constituted as a "meta-juridical category".

As far as the football industry is concerned, such legal disputes in England have involved, for instance, the recent legal action by Steve Foster of Brighton who, in an unprecedented move, challenged F.A. rules through the courts.¹⁸ Foster applied to the High Court to set aside an F.A. suspension which stopped him from appearing in the 1983 F.A. Cup Final as a result of an automatic two-match ban due to his accumulation of 31 disciplinary points at the end of April 1983. The action was based on the belief that the suspension was contrary to the rules of natural justice because neither the club nor the player was allowed to appeal against the suspension, although, it was alleged, F.A. rules should permit an oral hearing¹⁹ if they were

to comply with the general principle of a right to a fair hearing. Other such legal disputes may also involve, in the future, questions such as whether it is illegal for a professional footballer to be punished twice for the same offence, by club and association.²⁰ A highly publicised case in point is that of the England international, Trevor Francis, who, having been fined by his club - at that time Manchester City - a sum in excess of £1,000 (ie. the figure reputed in national and local press, probably amounting to something approaching half of one week's wages)²¹ for a field offence²² which had led to him being sent off in a First Division fixture between Manchester City and Everton on March 20th, 1982, was also banned by the Football Association. This may well, as on numerous other similar, though less publicised occasions, contravene the principle in English law that in theory prevents a citizen from being tried and punished twice for the same offence. It is, of course, yet to be tested in a court action. However, legal conflicts have also arisen in very different circumstances; for example, over Don Revie's (ex-England and Leeds United manager) claim in 1980 against the Football Association's ten year ban, following his footballing 'defection' to the Middle East, whilst under contract to the F.A. as England manager. Although the issues heard by Cantley J. in the High Court involved Revie's lawyers' claims that ten years' deprivation of employment was unreasonable and in restraint of trade on the lines of the Eastham and Packer court case 'precedents', and also that there was bias in the F.A. disciplinary tribunal which decided on the ban, any conception of such a legal case as 'an arena of struggle' following Revie's blatantly deliberate and mercenary breach of his contract involves extremely difficult political somersaults. Further still, if the sporting horizon is broadened to include cricketers'

rights and the question of 'law as an arena of struggle', the tour of English cricket 'rebels' (as the press dubbed them) to South Africa in March, 1982, can be considered. Whereas the Packer case could be justified, socially and politically, on the basis of the relatively low wages of international and county cricketers in England prior to the emergence of W.S.C. and the High Court action, the very same principles - 'freedom of contract', the opposition to 'restraint of trade' - were used by the 'rebel' players to justify their perfectly legal behaviour in touring South Africa, without so much as a hint of moral, political or social qualms. The outcome of the T.C.C.B.'s three year ban on the players from playing test cricket is far from clearly decided,²³ and may, eventually be the setting for yet another legal action (or series of court cases) brought by the players, thereby hardening the already emerging split within the Cricketers' Association. The cricketers' tour was swiftly followed by a similar move by English and other countries' footballers organised, somewhat ironically, by former Players' Union leader Jimmy Hill,²⁴ in July, 1982. The footballers' tour was abortive and widely ridiculed,²⁵ although the Football Association, and subsequently F.I.F.A.,²⁶ allowed the participants to go unpunished, largely because, one suspects, the players would have threatened legal action against any ban on the lines of ^{that of} the T.C.C.B. because of its restraint of trade implications, and the football authorities calculated that they would lose in any subsequent court action; not to mention the presence of any lingering support for the tour among F.A. members! Therefore, there is no such thing as a straightforward consideration of whether law always affords an arena of struggle favourable to 'progressive' political forces, or for that matter, 'reactionary' political forces, in

the field, of sporting employment, even assuming such a distinction between progressive/reactionary could adequately be formulated. It is a case of considering each claim on its merits, and, as Elizabeth Kingdom has argued in reviewing Edelman's THE LEGALISATION OF THE WORKING CLASS:

"In fact, the type of concrete analysis advocated by Edelman requires that specific issues be analysed AS specific issues . . . there is no general answer to the question of whether rights should be secured in law."²⁷

However, it is feminist analyses, rather than orthodox or revisionist Marxist ones, that have managed to open up the question of the SPECIFICITY of law and legal rights.²⁸ Such approaches - heretical within some branches of the women's movement for their profound re-evaluation of Marxism's usefulness to feminism²⁹ - have avoided the pitfalls of reductionism which I discussed in Chapter 1 but in doing so come up against the accusation that the end result is a conception of law as absolutely autonomous; the very conception, typified by Kelsen in positivist legal philosophy, which radical scholars (Pashukanis, in particular) have attempted to overturn. Without wishing to minimise the problems generated by the anti-reductionist arguments, the concentration on the specific effectivity of law must be welcomed as an advance. Other movements concerned with specific 'groups' in society, such as children, ethnic minorities, homosexuals and so on, have also seen the need to focus on the precise question of legal rights, and in doing so critically assessed the orthodox approaches to the question of rights, whether from left, right or centre on the political spectrum. It may be that such appraisal leads to a partial abandonment of the vocabulary of 'rights' as such, whether it be women's

rights, children's rights, black rights, or in the case of the issue under focus in this thesis, players' rights, in and around the football industry. As has been argued:

" . . . there are considerable advantages in a vocabulary which conceptualises women's rights in terms of women's capabilities, capacities and competences, and in terms of the social practices whereby those capabilities, capacities and competences are constructed and modified."³⁰

Such a revised vocabulary might open up further the issue of legal strategies for changes in the social circumstances of certain groups, since:

"What is being argued is that campaigns under the banner of rights, if they are to be successful either in resisting attacks on existing rights or establishing new ones within the context of law, require the formulation of specific objectives which are at least potentially assimilable into law."³¹

This, of course, is a far cry from the Marxism of major figures in radical legal theory such as Pashukanis. As Hindess, Hirst and Hussain say in the conclusion to their fundamental critique of Marxist theory as it is currently constituted:

"Marxists have classically considered law as being merely the juridical expression of the relations of production and the relations of actual possession involved therein . . . (the limited liability) legal form appears as a necessary 'expression' of the concentration of capital. Such an analysis is naively apolitical; law becomes an 'expression',

a recognition of what is, rather than an arena of struggle, a form with potential effects."³²

What such writers have in common with the strands of feminist thinking on law noted previously is their insistence that certain legislative changes are an absolutely ESSENTIAL field of political struggle. This means effectively that involvement in court cases, however important, may be less significant politically than creating certain **specific** parliamentary legal reforms and, crucially, opposing others. This, clearly, is distinguishable from the gradualism of the Fabians or post-war social democracy: neither is it equatable with the attitude of the labour movement in Britain to 'Tory' legislation, such as the INDUSTRIAL RELATIONS ACT, 1971. The precise nature of legal changes, their capacity to be implemented or opposed, or indeed what combination of legal and other strategies are necessary in any particular circumstances are vitally important political questions. They have to be taken seriously and not visualised EITHER as the sole means by which social change can come about OR token or symbolic displays of the strength or weakness of particular social forces.

Before feminism is itself obscured in this discussion, the issue of the gender of the legal subject which I have been focussing on should be highlighted. One of the contemporary legal conflicts which the Football Association has indulged in is around the question of female footballers.³³ Obviously the history of the 'footballer as a legal subject' in the century to date is that of an exclusively male professional, association football player. But in recent years womens' amateur soccer teams have grown in number and importance to the point where the F.A.'s rule to the effect that "girls can't play in boys' games"³⁴ has come under scrutiny as a result of legal actions in courts and

tribunals. For instance:

"In 1978, the Court of Appeal upheld, under section 44, (of the SEX DISCRIMINATION ACT, 1975) the FA policy in a case concerning . . . (a) talented girl footballer. Lord Denning announced that the law would be absurd 'if it tried to make girls into boys so that they could play in a football league'."³⁵

Section 44 of the 1975 SEX DISCRIMINATION ACT was indeed supported during its parliamentary passage on the grounds that professional football clubs could carry on with all-male teams whilst still maintaining their legal duty to avoid discrimination on the grounds of sex.³⁶ Further cases have found section 44, as well as the attitudes of the judiciary, an obstacle in overcoming the F.A.'s discriminatory rules, but the increasing concentration on the ideological issue of women's place in sport³⁷ is likely to promote new and more determined legal challenges in the future. Most certainly any progressive campaign for the legal rights of football players in the NEXT 100 years will have to take into account the place of women PROFESSIONAL, as well as amateur, footballers.

This Chapter has argued, in the wake of the evidence presented in the body of the thesis, that professional footballers' legal rights, like those of other professional team sportsmen/women cannot simply be transformed through the mythical evolutionary process signified by the formula illegality-legality-freedom. Instead progress must be sought through a number of related strategies in which legal struggle is of vital importance. In the section which follows some aspects of such strategies will be considered.

FUTURE STRATEGIES AND PRESENT PROBLEMS FOR THE PROFESSIONAL FOOTBALLER

In conclusion to this thesis, it will be necessary to elaborate on some of the social and legal strategies for radical change within the football industry in England and Wales which might be used in the foreseeable future. These are implied within the body of the thesis, but need to be considered separately, and, in the light of serious financial crises associated currently with the game and the subsequent 'scapegoating' of the football player,³⁸ must be placed firmly within the contemporary social relations in and around the football world. These radical strategies involve a consideration of: firstly, the role of the Professional Footballers' Association; secondly, the increasingly international context of the issues surveyed here; and, thirdly, the possibilities of the democratisation of the football industry in this country, which necessarily overlap with the previous two aspects of the analysis.

One of the assumptions behind this work is that previous writing on the social history of the football industry has, in the main, been misleading on the role of the Players' Union/P.F.A., and further that a proper history of the organisation itself, has, until recently, been significant by its absence. Moreover, a view of the union has prevailed which considers it in direct comparison with industrial trade unions in Britain and overseas. It has been contended here, however, that such a view is inadequate and leads to unjustified condemnation of the performance of the organisation through the years. Simply lumping the P.F.A. together with 'white collar' unions, or worse, manual worker unions is not satisfactory; instead, the players' body is better considered alongside the very specific role adopted by other player associations, in other sports³⁹ and in other countries. This role which is

also the major potential function of the P.F.A. in any radical strategy for the future is that of a pressure group. Although the union does perform a number of standard trade union services it is clearly much less involved in representing its members on key aspects of their contractual negotiations than is the case with most trade unions. Wages, in the era of 'freedom of contract', are obviously the most important area. Certain conditions are part of the standard form contract of employment of the professional footballer; however, he has far more opportunity to negotiate salary terms on an individual level with management than most employees.

Not only is the P.F.A. somewhat disabled in such traditional trade union activities by the existence in modern times of individual wages bargaining.⁴⁰ Its ability to mount a successful players' strike has also been severely limited throughout its history by strong financial ties with the footballing authorities (especially the Football League) which still persist today: the union has relatively little in the way of independent funds and runs on a fairly low subscription rate.⁴¹ Although it has several times reached the brink of strike action since 1907, it is unlikely in current conditions to be able to carry through a players' boycott as, for instance, its counterpart in Spain did at the beginning of the 1981-2 Spanish soccer season (prior to the World Cup tournament) in order to force the football authorities to pay £1.6 million owed to players.⁴²

What kinds of activity would come under the wing of the union in its position as briefly outlined? Already the P.F.A. has campaigned in recent years for the Department of Employment to limit the number of non-EEC players (on the basis of quality) coming into English football⁴³ as well as for the introduction of a compensation⁴⁴ system along the lines of that adopted in Europe and the U.S.A.

and actively involved itself in pressure group activity with bodies like the Football Trust⁴⁵ and the all-party House of Commons Committee⁴⁶ on football. Such activities need to be continued and extended if the P.F.A. is to be more than the minor body many historians of the game have designated it, and, particularly since the appointment of Gordon Taylor as Secretary there are signs that any future histories of the English football industry will be forced to take more seriously what the representatives of the players themselves have to say. In the 1980's, for instance, the P.F.A. have taken up the issues, amongst others, of: improved conduct on the field and in particular the need to eliminate the so-called 'professional foul'⁴⁷; the thorny question of secretive medical checks when a player is bought and sold⁴⁸; and the 'right' of players to be employed as limited companies by their clubs in order to allow the few highly paid footballers to spread their tax load and thereby encourage them to stay in English football rather than take their talents elsewhere.⁴⁹

Nevertheless, nobody should gain the impression that such reforming action by the Players' Union (frequently unsuccessful in any case) constitutes a SUFFICIENT strategy for radical change in the football industry of the future. This thesis has illustrated at length that the very fact of the existence of the transfer system (however modified) in the everyday life of the professional footballer, over virtually all of the century since his birth as a legal subject, has CONSTRUCTED a paternalistic football culture which ties the player and his organisation to the limited liability triangle of club, League and Association. A successful Union of the future needs greater legal and financial independence than it has hitherto achieved; its reforming zeal is necessary but not, in current conditions, enough to overhaul a bankrupt industrial structure; and, lest any one be tempted at any time to forget the effect

of so many years build-up of an ideology in which the player 'knows his place' and is not expected to pass judgement on the football world (manifested best until recently in the F.A. rule banning ex-players from representation in the decision making bodies of the Association), let alone the social world OUTSIDE football, it is worth noting the response of the P.F.A.⁵⁰ in May 1982 to the war in the Falklands, which amounted to: 'if the government asks players not to take part in the World Cup in Spain, the overwhelming response would be to obey.'⁵¹ The Players' Union has always had individuals whose radical political thinking it could draw on as a source of strength - Roberts, Meredith, Guthrie in the past - but its political⁵² outlook IN GENERAL has frequently been imperialistic and conservative throughout its history. Whether that will alter in the decades ahead is a matter of conjecture,⁵³ but the P.F.A. certainly cannot succeed any longer in fighting for footballers' rights on a purely national plane - indeed even if it ever could.

The internationalisation of professional football has been proceeding apace since the 1950's. Legal strategy is important here, too, as the P.F.A. recognised when it became involved in the dispute which led to the COOKE v. F.A.⁵⁴ court case in 1972, and ended with a favourable decision by Foster J., outlawing 'restraint of trade' internationally as the 'symbolic' EASTHAM decision had done in England in 1963. Players do not simply require employment mobility within their own countries but also BETWEEN countries. The Eastham case after all was only, ostensibly, about restraint of trade within the English Football League.⁵⁵ Since the increase in football players going back and forth across the Atlantic during the 1970's and early 1980's, disputes have arisen between the respective administrative bodies and individual clubs in the USA and Britain.⁵⁶ The restraint of trade issue⁵⁷ raises its head, then, on an

international scale. The entry of Britain into the European Economic Community (E.E.C.) during the 1970's carried perhaps the most potentially significant implications for the P.F.A.'s fight for full freedom of contract for players. In 1978 the Union of European Football Associations (UEFA) "issued new regulations and guidelines to cover the movement of players between clubs in member countries of the European Community."⁵⁸ Under such rules:

"Players are free to move to any club in the EEC on the expiry of their contract but, as in England, the two clubs must agree upon a transfer fee. If there is no agreement on the size of the fee within 30 days the matter ~~is~~ ... settled by a Board of Experts."⁵⁹

The TREATY OF ROME, especially Articles 7, 48 and 59 concerned with 'freedom of movement' in the E.E.C., has also come to affect the players' rights and livelihood. After the 1976 case of GAETANO DONA v. MARIO MONTERA⁶⁰ was ignored in Italy, UEFA and the Common Market Commission met in 1978 to produce the present rules which provide for clubs limiting non-nationals from other E.E.C. countries whilst still upholding the principle expounded in the GAETANO case on the basis of interpretation of the relevant Articles - that is, that national discrimination against the employment of footballers from other E.E.C. countries is illegal and would henceforth be outlawed. It is conceivable that many other issues of a European and generally international dimension will follow in the near future.

However, because the P.F.A. needs to turn its eyes to other countries for employment for its members and take account of an increasingly international dimension to English professional football does not mean that a national

focus cannot correctly be adopted. If the P.F. A. is to play a significant role in leading the campaign for players' rights into the 21st century it will certainly have to broaden its strategy into one which tries to 'democratise' the football industry, but specifically in terms of English conditions. The notion of democratic change in the football industry in England and Wales would have to be carefully considered in view of the prominence of two radically different notions of democracy current in commentary on the game. There is the profoundly conservative contention that organisations like the F.A. are at present democratic (Professor George Keeton⁶¹ is one writer to have claimed that this is so) in the sense that they are founded on 'representative democracy'; and there is the argument (put forward mainly by Ian Taylor and criticised in earlier Chapters of this thesis) that a participatory, popular democracy has underlain the historical development of the relations of English football. Both of these conceptions are, I would argue, unsatisfactory.

The precise nature of the democratisation of football in this country is in urgent need of discussion. But if it is to avoid the pitfalls of these other two notions of democracy⁶² it will have to take into account certain fundamental structural constraints in the social relations of the game. If such a process is to 'interpellate' its proper constituency, recognition has to be given to the fact that soccer no longer recruits from only a deferential and relatively conservative indigenous working class. It - along with other sports⁶³ - draws increasingly from the thousands of working class second-generation Caribbeans or Africans creating a prospect of brown or black British sporting international teams by the end of the century. Also, new and various forms of ownership and control of the clubs, League and Association need to be explored. Short

of a 'syndicalist' take-over by players (despite Chas. Critcher's comments, a most unlikely scenario!), democratic participation will necessarily involve a combination of strategies including making use of legal provisions already available (common ownership schemes perhaps, involving players, spectators and others) and constructing new and more effective ones. Legislation to regulate bodies such as the Football Association and Football League in order for proper participation by players' bodies, supporters clubs and so on may well be necessary to prevent the continuing denial of player participation in the administration of the game.

Undoubtedly, that administration has come under increasing strain since the mid-1950's, a tension which has finally manifested itself in what is universally described in the 1980's in the mass media as football 'in crisis'.⁶⁴ That assumption, of course, needs to be:

"seen . . . in its context. Football remains by far the most popular sport in Great Britain, both in terms of the numbers who play, and those who watch, the game."⁶⁵

Indeed, the football industry in England and Wales entered the 1980's "with its horizons broader than ever . . . more than at any time before (football) can truly be called the world game."⁶⁶ But with 'crisis' seminars of Football League club representatives having been convened at Solihull, in 1981⁶⁷ and 1982⁶⁸, and various new inquiries set up,⁶⁹ the consistent emphasis has been on the problem of the reduction by more than half of the football industry's spectator support from a peak (in any event an unrealistic one because of the thirst for popular entertainment in the 'age of austerity' following the end of the Second World War) of 41.2 million in 1948-1949.⁷⁰ The general

effect of the loss of the millions of paying spectators is seen as creating severe financial debts⁷¹ amongst the 92 Football League clubs,⁷² as more than one economic analysis has shown.⁷³ Much debate⁷⁴ in the rapidly mushrooming discipline of the economics of sport has examined the arguments for and against the imposition of labour market controls in sport, generally, and professional football in particular. As has been demonstrated in this thesis, with regard to football, "club and league officials have always argued that labour market controls are necessary for the survival of their sport."⁷⁵ One interesting feature of the moves towards "freedom" for professional team sports players is that this has demonstrably not been seen to be the case. Modification of labour market controls has not in itself resulted in the wholesale demise of professional team sports, though as far as professional football in England is concerned, the argument about the causes of its undoubted decline in appeal still rages. Even the neo-liberal,⁷⁶ social market theory thrust of much of this economic and popular discourse, giving calls for freedom of contract for sports players a distinctive right-wing inflexion, stops short of total abolition of controls in the team sports labour market.⁷⁷ However, the effect of such discourse is to increase the public stigma of questions about footballers' wages,⁷⁸ behaviour and so on, and to reinforce the football clubs' policy of drastically reducing playing staffs in the 1980's.⁷⁹ Whether, as UEFA wish, the English transfer system is adapted accordingly, that is with a new 'compensation' system, only time will tell. Even that, however, as in many other professional team sports, would still leave the professional footballer in England subject to some remaining form of labour market controls,⁸⁰ unless the prevailing ideological climate can be reversed.

REFERENCES

1. Elizabeth Kingdom: "The Protection of Law: Introduction to Bernard Edelman: THE LEGALISATION OF THE WORKING CLASS" , op. cit., page 48.
2. Beverley Brown and Mark Cousins: "The Linguistic Fault: the case of Foucault's archaeology" in ECONOMY AND SOCIETY Vol. 9 No. 3, 1980, page 269.
3. Wood, in Neville Turner and Jenkins (eds) op. cit., page 83.
4. ibid., page 84.
5. for example, see Nickolds and Hey, (eds) op. cit., passim.
6. for example, Triesman in Vinnai, op. cit.
7. Critcher in Clarke et al (eds), op. cit., page 184.
8. Zen Bankowski: "Does Law Make Footballers Free?", op. cit.
9. ibid.
10. Roger Cotterrell: "The Development of Capitalism and the Formalisation of Contract Law", paper to British Sociological Association Conference on 'Law and Society', at University of Warwick, April 1979, page 3. (A version of this paper is published in Robert Fryer et al (eds): LAW, STATE AND SOCIETY (Croom Helm, 1981)).
11. Quoted in Kingdom: "The Protection of Law", op. cit., page 49.
12. ibid.
13. I have discussed 'official discourse' conceptions of the player in previous chapters and it is clear that without extra-discursive 'action' little change occurs in the legal status of the player. For the spectator, however, official discourse has had rather more pertinent effects.
14. Vincent Porter: "Film Copyright and Edelman's Theory of Law" in SCREEN Vol. 20 No. 3/4, 1979/1980.
15. E.P. Thompson: THE POVERTY OF THEORY AND OTHER ESSAYS

(Merlin, 1978), page 288. The essay, of course, is ironically, a tirade against Edelman's mentor, Louis Althusser, yet Thompson shares, with Edelman and others, a view of the law's capacity to be "above all . . . an arena for class struggle, within which alternative notions of law were fought out."

16. ~~E~~xtracts in ECONOMY AND SOCIETY, op. cit.
17. ibid; Edelman also looks at the effect of designating labour as PROFESSIONAL which he says is to depoliticise strikes.
18. "Foster fights Final ban in court" in The GUARDIAN May 13th, 1983. In fact the High Court, with Vinelott J. sitting, refused Foster an injunction to delay disciplinary action; see John Ezard: "Foster ruled out of cup final as high court backs FA ban" in The GUARDIAN, May 17th, 1983. The court held that since the rules governing the disciplinary system for 1982-3 were agreed at the beginning of the season (with the P.F.A. as one of the parties) it would be unfair to other players if the court were to find in favour of Foster.
19. See, on F.A. regulations on disciplinary procedure for 1982-3 season, Chapter 5 above. Gordon Taylor, P.F.A. Secretary, had earlier in May 1983 discussed with F.A. officials the possibility of accumulation of disciplinary points counting only in the competition in which they were awarded (as in U.E.F.A. competitions) but this was rejected.
20. I am grateful to the P.F.A.'s long-standing legal adviser, George Davies of George Davies and Co., Solicitors, 81 Fountain Street, Manchester for this point which he made at an interview on April 27th, 1982.
21. Francis confirms this salary figure in a book, with

David Miller: THE WORLD TO PLAY FOR (Sidgwick and Jackson, 1982), page 40. He also criticises the club's inconsistent approach to players' conduct; see page 52.

22. Francis, incidentally, lost his appeal to the F.L.M.C. against the club decision, and did not eventually exercise his right to a further appeal to the independent appeal tribunal, F.L.A.C.; see, *ibid.*, page 52, where he explains that the manager, John Bond, agreed to halve the fine after Francis had appealed against the F.L.M.C. decision.
23. For instance, the year of 1983 began with reports of further tours by English players - 'rebel' players simply returned to South Africa to play for provincial sides in the Winter of 1982/3 anyway - and the M.C.C. have faced (and so far rejected) efforts by John Carlisle, MP, to send a team to South Africa which would risk the break-up of international cricket into black/coloured and white 'countries'. See generally on such issues, Garry Whannel: BLOWING THE WHISTLE: The Politics of Sport (Pluto Press, 1983), especially Ch. 1.
25. Editorial: "A Spectacular Own Goal" in The GUARDIAN July 22nd, 1982.
26. "Rebels Escape Ban" in The DAILY MAIL September 4th, 1982.
27. Kingdom: "The Protection of Law", *op. cit.*, page 48. Edelman's book to which she refers was first published in Paris, France by Christian Bourgeois Editeur, in 1978, under the title LA LEGALISATION DE LA CLASSE OUVRIERE.
28. For one very clear example, see Elizabeth Kingdom: "Sexist Bias and the Law" in POLITICS AND POWER 3, 1981.

29. See Sheila Rowbotham, Hilary Wainwright and Lyn Segal: BEYOND THE FRAGMENTS (Merlin Press, 1980).
30. Kingdom, "Sexist Bias and the Law", op. cit., page 110.
31. ibid., pages 111-112.
32. Athar Hussain, Barry Hindess and Paul Hirst "Conclusion" to Cutler, Hirst Hussain and Hindess: MARX'S Capital AND CAPITALISM TODAY, Vol. 2 (Routledge and Kegan Paul, 1978), pages 247-248.
33. David Pannick: "How the FA Kicks Girl Footballers Off The Park" in The GUARDIAN November 16th, 1981.
34. ibid., Pannick quoting an F.A. official.
35. ibid.
36. See the Court of Appeal case Pannick, ibid., discusses: BENNETT v. THE FOOTBALL ASSOCIATION LTD, unreported Court of Appeal case, July 28th, 1978.
37. See Chas. Critcher and Paul Willis: "Women in Sport in Ideology" in Hargreaves (ed), op. cit.
38. See Peter Ball: "The Bristol City Eight" in MARXISM TODAY April, 1982. Bristol City went into liquidation in 1982 and a new limited company emerged to take the old one's place (see Table 4). However, the 'eight' players who Ball discusses were presented as the cause of the club's dilemmas rather than loyal 'servants' who had signed perfectly legal long-term contracts when Bristol City were in the First Division. The P.F.A. played a significant part in the negotiations which led to the players being paid redundancy money of around £10,000 each; see Julie Welch: "The Bubble Bursts" in The OBSERVER February 7th, 1982.
39. In an interview, op. cit., Steve Coppel, Chairman of the P.F.A., stressed the potential of the Union to play a similar role in the 'government' of the industry to that of the P.G.A. (Professional Golfers' Association) in golf.

40. See my paper: "The Contract of Employment as a Legal Institution", Working Paper, School of Law, University of Warwick, 1975 (Jan). As Mason and others have pointed out, throughout the history of professional football, agents for players have often taken over the trade union function here, both at club and international level. Today, the agent is concerned to sell some players in almost any market place, in the manager's office and beyond; see Ronald Atkin: "The Selling of a Rising Star" in The OBSERVER December 21st, 1980. Even so, in practice, the P.F.A. stresses that agents frequently come to the union for advice before advising the player; see, interview with Steve Coppel, op. cit.
41. i.e. compared to most players' current wages. This does however allow, as discovered at one club visited for the field work for this thesis, for senior (that is, full-time) players to pay apprentices' subscriptions. The subscription for full-time players in 1982/1983 season was £12, though it is kept under review. Part-timers pay approximately half full-time subscriptions, and apprentices (most of whom are members) pay a quarter of the full-time rate.
42. "Spanish Soccer Delay" in The GUARDIAN September 7th, 1981.
43. Peter Johnson: "Curb soon on cheap foreign imports" in The DAILY MAIL March 28th, 1981.
44. See Chapter 4, above.
45. That is not necessarily to endorse all the activities of the Football Trust which was, at least initially, too concerned with traditional solutions to "football hooliganism". See Brian Scovell: "Pools Millions To Buy Peace on the Terraces" in The DAILY MAIL.

December 21st, 1979 and Robert Armstrong: "Chestnut Season in Park Lane" in The GUARDIAN. March 3rd, 1981.

46. "The Committee's main aim is to see how football - loving M.P.'s can assess the game in so far as Parliament and its actions impinge on the sport", according to Tom Pendry (M.P. for Stalybridge, and a member of the Committee) in a letter to me, June 1st, 1981. Pendry also pointed to the fact that no formal reports are issued by the committee.
47. "PFA seek deterrent" in The GUARDIAN November 18th, 1980.
48. "Union Goes On The Attack" in The DAILY MAIL October 29th, 1981.
49. Alan Hubbard: "Tax Factor" in The OBSERVER May 24th, 1981.
50. The Scottish P.F.A. Secretary, Harry Lawrie, who actively campaigned for the withdrawal of the home countries from the 1982 tournament, at least had the justification that his organisation had developed principled opposition to the dictatorial military government in Argentina over several years.
51. Alan Gowling, then Chairman of the P.F.A., and Gordon Taylor, did at least qualify this by emphasising that newspaper speculation about withdrawal was largely premature. .
52. George Davies, in the interview with him, op. cit., stressed to me the formally NON-POLITICAL (in party - allegiance terms) nature of the union, especially since the beginning of his association with the organisation in the early 1950's.
53. see Paul Hince: "Soccer's new 'thinker'", in The (PINK FINAL) MANCHESTER EVENING NEWS December 13th, 1980, and Peter Johnson: "He's Taylor-made" in The

DAILY MAIL November 14th, 1981, who stress the academic/intellectual background of Gordon Taylor when succeeding Cliff Lloyd as Secretary of the P.F.A., rather than any political stance. Certainly the leadership of the P.F.A. in recent years has reflected a shift from traditional working class footballer (typified by Lloyd, Dougan and others) to university educated, more middle class, 'intellectuals' such as Taylor, Gowling and Coppell. Whether such a trend reflects a softening of the politics of the union is highly dubious, as suggested in Chapter 4, above.

54. (1972) The TIMES March 24.
55. See Keeton, op. cit., pages 140-141.
56. One of the most highly publicised cases was, inevitably, George Best and Fulham F.C. See Best's own account in George Best (with Graeme Wright) WHERE DO I GO FROM HERE? - An Autobiography (Queen Anne Press, 1981).
57. In the early part of the 1981/2 season Millwall claimed that Q.P.R.'s claim on their player Dean Neal, who had spent a summer in the U.S.A. with Tulsa Roughnecks, was a restraint of trade, as the player wished to sign for Millwall on his return. See Harry Harris: "Court Case Will Test The System" in The DAILY MAIL September 29th, 1981. The outcome was that the issue was settled in Neal's favour.
58. Sloane, op. cit., page 57.
59. ibid., pages 57-58.
60. Case 13/76 (1976) ECR 1333, which itself followed the earlier case of WALRAVE v. UNION CYCLISTE INTERNATIONALE, Case 36/74 (1974) ECR 1405.
61. op. cit., page 113.
62. see Barry Hindess: PARLIAMENTARY DEMOCRACY AND SOCIALIST POLITICS (Routledge and Kegan Paul, 1983),

especially Ch. 2; Hindess stresses that many areas of British society are subject to regulation by private bodies whose decisions frequently have effective legal sanction yet those bodies are subject to no specific forms of direct statutory control (page 62). Football is a prime example of this.

63. Ernest Cashmore: BLACK SPORTSMEN (Routledge and Kegan Paul, 1982).
64. to take one example at random, see The NEWS OF THE WORLD investigation: "Soccer Crisis: The Price of Survival", April 26th, 1981.
65. Social Trends: "Football - Our Most Popular Sport in NEW SOCIETY op. cit.
66. David Lacey: "More Riches Than Ever, but not through the Turnstiles" in The GUARDIAN December 10th, 1979.
67. see David Lacey: "Talking Shop Set To Act" in The GUARDIAN February 6th, 1981.
68. David Lacey: "Focus on Sidelines" in The GUARDIAN February 23rd, 1982.
69. in October 1982 the F.A. set up a technical committee to look at a number of issues, including behaviour of players. See Charles Burgess: "Think Tank For Change" in The GUARDIAN October 15th, 1982. A Football League advisory Committee consisting of Jimmy Hill, Sir Matt Busby and Bobby Charlton had been created earlier in 1982.
70. Social Trends, op. cit.
71. see Tony Lyons: "More Kicks Than Ha'pence" in The OBSERVER September 2nd, 1979. A 'World In Action' Granada TV documentary screened on February 15th, 1982 followed the near-liquidation of Bristol City Football Club in the early weeks of 1982, and reported that the vast majority of clubs depended on the 'goodwill' of bank managers. The P.F.A. officials

have stressed this, constantly, over the past few years.

72. see Norman Fox: "Clubs defy logic by mere existence" in The TIMES December 9th, 1980.
73. see, W.E. Skinner: "The Football Industry: A Second Discussion Paper" (Sheffield City Polytechnic, 1982).
74. see especially Sloane, op. cit.; "The Labour Market in Professional Football" in BRITISH JOURNAL OF INDUSTRIAL RELATIONS Vol. 7, 1969; "The Economics of Professional Football: The Football Club as a Utility maximiser" in SCOTTISH JOURNAL OF POLITICAL ECONOMY Vol. 18, 1971; "Restriction of Competition in Professional Team Sports" in BULLETIN OF ECONOMIC RESEARCH Vol. 28 No. 1, 1976. Also see Chris Gratton and Bernard Lisewski: "The Economics of Sport: A Review" (Manchester Polytechnic Discussion Paper, Department of Economics and Economic History, January 1980), and "The Economics of Sport in Britain: A Case of Market Failure?" on BRITISH REVIEW OF ECONOMIC ISSUES April, 1981.
75. For instance Peter Johnson: "Directors to Blame, Say the Players" in The DAILY MAIL December 12th, 1981, quotes Gordon Taylor as responding to allegations that rising players' wages were the main reason for the economic plight of many football clubs in the 1981-1982 season, by saying that their nearness to bankruptcy is the product of directors' use of them as exclusive businessmen's clubs. For a sustained view of this cause of financial crisis in the game from the same standpoint, see Dougan: HOW NOT TO RUN FOOTBALL, op. cit., passim.
76. Sloane's SPORT IN THE MARKET?, op. cit., for example, is published by one of the main British institutions for the dissemination of Friedmanite/Hayekian ideas, namely

the I.E.A. (Institute of Economic Affairs).

77. Sloane, *ibid.*, page 37, argues for making the professional sports industry exempt from monopoly and restrictive practices law, as in U.S. baseball.
78. Rob Hughes: "Forty days in the Wilderness" in The MAIL ON SUNDAY May 2nd, 1982 shows clearly that proportions of total wages to receipts over the post-war period have remained constant and, therefore, that wages overall could not, in themselves, be responsible for crises in the financial structure of football.
79. See Peter Ball: "Hundreds of League players jobless as clubs cut back", in The OBSERVER August 22nd, 1982.
80. That is, some form of transfer system, involving the buying and selling of the player as a commodity.

CONCLUSION

It has been argued in this thesis that the professional footballer in England and Wales is 'the subject' of a somewhat contradictory discourse, or set of discourses. In Chapter 1, I investigated the series of theoretical attempts to break with the empiricist concept of the subject, so often reproduced by the legal discourse¹ under investigation in the rest of the thesis. In Chapter 2, I traced the discursive conditions, legal and social, of the 'birth' of the professional footballer as a legal subject. Much of the debate in the nineteenth century surrounded the 'amateur' as a legal subject and despite the extinguishing of such a figure in the rules of the Football Association² in the 1970's when the contract/non-contract player distinction was inaugurated, the amateur and his ethos reign in football today as in many other sports. The Football Association and much of the Football League and its member clubs are the province of amateurs³ who are just as paternalistic as their nineteenth century counterparts. 'Respectability'⁴ for professional footballers may well have been achieved in the twentieth century, in marked contrast to the closing decades of the nineteenth, but in the 1980's, as in the 1950's when he wrote it, Geoffrey Green's⁵ comment that:

"To many professionalism still represents a lowering of social status, for it is held in some places that no man can embrace the professional mantle and still continue to take part in games with freedom from the influence of ulterior motives. Yet the opposite is the truth, for by becoming a professional a person takes an honest position in society, free from the shame and

pretences that cloak so many sections",⁶ carries echoes of the footballer's discursive past which are by no means as dead as his own moral condonation would have us believe. In particular we need to know much more about the social relations of football between the two World Wars. The period, including the 1950's, which I have, slightly ironically, signified by the terms 'respectability and deference' needs far more rigorous investigation than I have been able to undertake here. There are great problems with the recall of our 'past' when it is as recent as the 1940's and 1930's⁷ but without such historical work future 'talk' about the professional footballer will fall into the same traps which I have tried to outline in Chapter 3.

The remainder of the thesis - Chapters 4, 5 and 6 - has attempted to sound a cautionary note so far as the footballer's 'road from serfdom' since the 1960's is concerned. When writers like John Sutherland say of the early sixties:

"This was a period of insurgence. National Service, with all its hated conformity, was finished. Footballers - those other working class heroes - had successfully broken the terms of contract that kept them to a maximum £20 a week (how bizarre that serfdom appears, from the standpoint of the 1980's)"⁸,

or historians like Arthur Marwick, under the slogan 'Roads to Freedom', recall that:

"A symbolic case study was provided by Association Football. The abolition in 1962 (sic) of the maximum wage, an achievement of the Professional Footballers'

Association under the leadership of Jimmy Hill, enabled the best players to escape into a world of high earnings which, though most players remained working class in background and manner, had something of that veneer of classlessness to be found in other branches of the entertainment industry. Football became fashionable "⁹,

they are indulging in a nostalgia which closes off the kinds of questions which this thesis has tried to pose, and, in some senses, answer. Alan Gowling was probably much nearer the mark when he wrote in his own thesis on football:

"In seeking freedom of contract, the P.F.A. has done no more than seek parity with other working groups. The association, quite simply, wanted to see players free to move at the end of their contracts. The P.F.A. believed freedom would improve the relationship 100 per cent at club level. 'The clubs would no longer be gaffers . . . a better relationship would take place overnight. Players would be treated like human beings'".¹⁰

However, just as at the birth of the footballer as a legal subject in the late nineteenth century there appeared to be the possibility of 'popular' participation in the government of the people's game only for hopes to be rapidly dashed with the onset of World War I, the prospects for a radical change in the 1980's are fraught with difficulties and 'roads to freedom', in any event, never really end. What is important to remember is the effects of the social constructions of our 'past' on the

relationships of the present and indeed of the future. The dead weight of past discourses on the lives of the living - to mischievously paraphrase Marx - have, in the case of football heavily restricted the scope for 'resistance', which in Foucault's view is the bi-polar opposite of power. Collective struggle for change has always been difficult to achieve given the nature of the social relations of the sport, but the professional footballer's very existence as a legal personality may be at stake before the end of the twentieth century. If certain changes do not take place, along progressive lines, the 'body' referred to by legal discourse on football in the future may well be a mere blip on a video screen watched by a new and very different generation of 'armchair' supporters.

REFERENCES

1. Burton and Carlen, op. cit., argue the case for this most convincingly.
2. See Tony Pawson: "Time for the amateur to contract out" in The GUARDIAN November 25th, 1974. Pawson, an amateur himself in the true public school/amateur international tradition, argued that "the amateur, it seems, will always outlive the legislator."
3. Despite the recent relaxation of the rules governing paid directors. The social class of many of the amateurs may be changing (ie. they are more middle than upper class) but the professional element in the sport remains players, managers and coaches etc.
4. See John Hutchinson: "Respectability in Sport" in the NEW EDINBURGH REVIEW, issue on "Working Class Culture and Consciousness", 1974.
5. hardly one who has eschewed the amateur spirit himself, he is probably the modern inheritor of N.L. Jackson and Gibson and Pickford's "amateur" sports journalist mode.
6. SOCCER: THE WORLD GAME, op. cit., page 59.
7. See C.C.C.S.: MAKING HISTORIES, op. cit., page 357, note 11.
8. OFFENSIVE LITERATURE: Decensorship in Britain 1960-1982 (Junction Books, 1982), page 24.
9. BRITISH SOCIETY SINCE 1945 (Allen Lane, 1982), page 156.
10. Gowling: FOOTBALL INSIDE OUT, op. cit., page 162.
This passage is directly reproduced from his MA thesis, "The Occupation of the Professional Footballer", University of Manchester, op. cit., in which he states that the inner quotation marks signify a statement of one of the subjects of his study, who asked to remain anonymous.

The Football Association prohibited the publication of the thesis, although certain sections appear in FOOTBALL INSIDE OUT, and in "The Place of Luck in a Professional Footballer's Life" in David Weir (ed): MEN AND WORK IN MODERN BRITAIN (Fontana, 1973), a very short and unrepresentative piece by Gowling.

APPENDIX 1

CHRONOLOGY

1863	Formation of the Football Association
1885	Professionalism legalised (in England) by the Football Association
1888	Formation of the Football League
1893	First, unsuccessful, attempt to form a players' union
1898	Second attempt to form a players' union
1899	Body representing the players is formed
1901	Maximum wage introduced
1903	Football Association becomes a limited liability company
1904	Football League becomes a limited liability company
1907	Association Football Players' Union formed
1909	First strike threat by players
1912	KINGABY v ASTON VILLA F.C. court case
1919	Players' Union becomes Association Football Players and Trainers Union
1921	Football League Management Committee reduces the maximum wage
1947	National Arbitration Tribunal decides a new scale of wages
1949	Joint Standing Committee of F.A., Football League and Players' Union established
1951	First Political and Economic Planning (P.E.P.) Report published
1952	Forster Committee of Investigation set up by Ministry of Labour

1953	Industrial Disputes Tribunal decision on players wages
1957	Two Sunderland players suspended for 'under-the-counter' payments
1958	Players' Union is restyled as the Professional Footballers' Association (P.F.A.)
1961	Strike threat by players leads to the Football League's abolition of the maximum wage
1963	EASTHAM v NEWCASTLE UNITED F.C. case heard in the High Court
1963	National Negotiating Committee (N.N.C.) set up
1965	Three Sheffield Wednesday players (Tony Kay, Peter Swan, and David 'Bronco' Layne) imprisoned, and banned for life by the F.A., for taking bribes
1966	Second Political and Economic Planning (P.E.P.) Report published
1968	First Chester Committee Report published
1974	Commission on Industrial Relations (C.I.R.) Report published
1978	'Freedom of contract' proposal implemented by the Football League
1980	Pension scheme replaces the Players' Provident Fund
1981	New standard form contract of employment is adopted
1982	Second Chester Committee set up
1983	Second Chester Committee Report published

FORMS OF THE ASSOCIATION

P/FL

AN AGREEMENT made the
 day of 19..... between.....
 of
 in the COUNTY OF.....
 the Secretary of and acting pursuant to Resolution and Authority for
 and on behalf of the FOOTBALL
 CLUB of (hereinafter referred to as the Club)
 of the one part and
 of in the
 COUNTY OF Football Player
 (hereinafter referred to as the Player) of the other part. Whereby it is agreed as
 follows:—

1. The Player hereby agrees to play in an efficient manner and to the best of his ability for the Club for the period of (year/years) (hereinafter called 'the initial period of employment') from the day of to the 31st day of July Unless the initial period of employment shall either be (a) previously determined in accordance with the provisions of one or other of Clauses 10, 11 or 12 hereof or (b) terminated, extended or renewed as provided by clauses 17 and 18 of this Agreement.
2. The Player shall attend the Club's ground or any other place decided upon by the Club for the purposes of or in connection with his training as a Player pursuant to the instructions of the Secretary, Manager, or Trainer of the Club, or of such other person, or persons as the Club may appoint.
3. The Player shall do everything necessary to get and keep himself in the best possible condition so as to render the most efficient service to the Club, and will carry out all the training and other instructions of the Club through its representative officials.
4. The Player shall observe and be subject to all the Rules, Regulations and Bye-Laws of The Football Association, and any other Association, League, or Combination of which the Club shall be a member. And this Agreement shall be subject to any action which shall be taken by The Football Association under their Rules for the suspension or termination of the Football Season, and if any such suspension or termination shall be decided upon the payment of wages shall likewise be suspended or terminated, as the case may be and in any proceedings by the Player against the Club it shall be a sufficient and complete defence and answer by and on the part of the Club that such suspension or termination hereof is due to the action of The Football Association, or any Sub-Committee thereof to whom the power may be delegated.
5. The Player shall not engage in any business or live in any place which the Directors (or Committee) of the Club may deem unsuitable.
6. Unless this Agreement has previously been determined by any one of Clauses 10, 11 or 12 hereof as hereinafter provided, the Player shall not before the

last day of the playing season next preceding the expiration of any further or additional further period for which this Agreement shall have been renewed in accordance with the provisions of Clauses 17 or 18 hereof or before the last day of the playing season 19... if this Agreement shall not have been so renewed approach or entertain approaches from any other Club or person with a view to changing his Club unless otherwise agreed by the Club and Player. Under no circumstances shall the Player make any payment to agents or persons other than Clubs and persons regularly employed by Clubs and concerned in the engagement of Players with a view to obtaining employment.

7. The Player shall not directly or indirectly induce or attempt to induce a Player employed by another Club to leave that employment for any purpose or reason whatsoever.

8. The Player shall not offer to or receive from another Club or the Players of another Club or any person or organisation a bonus or any inducement to win, lose or draw a match.

9. The Player may apply to The Football Association for a personal hearing to answer a charge of misconduct under F.A. Rule 35. He may also be represented at the hearing by the Professional Footballers' Association provided that such representative is not a member of the legal profession.

10. This Agreement may be terminated at any time by mutual consent of both Club and Player.

11. If the Player shall be guilty of serious misconduct or breach of the disciplinary Rules of the Club or of the terms and conditions of this Agreement, the Club may, on giving fourteen days' notice to the Player, terminate or suspend this Agreement in accordance with the Rules of The Football Association without prejudice to the Club's right to transfer fees, and such notice shall be in writing specifying the reason for the same being given. Provided that such notice shall set forth and the above power shall be subject to the Right of the Player to appeal as follows:—

Any League or other Combination of Clubs may, subject to these Rules make such regulations between their Clubs and Players as they may deem necessary. Where Leagues and Combinations are sanctioned direct by this Association an Appeals Committee shall be appointed by this Association. Where Leagues and Combinations are sanctioned by County Associations an Appeals Committee shall be appointed by the sanctioning County Associations. Where an agreement between a Club and a Player in any League or other Combination provides for the Club terminating by notice to the Player of the Agreement between the Club and Player on any reasonable ground the following practice shall prevail. A Player shall have the right to appeal to the Management Committee of his League or Combination and a further right of appeal to the Appeals Committee of that body. A Club on giving notice to a Player to terminate his Agreement must state in the notice the name and address of the Secretary of the League or Combination to which he may appeal, and must also at the same time give notice to the League or Combination of which the Club is a member. A copy of the notice sent to the Player must at the same time be forwarded to the Secretary of this Association. The Player shall have the right of appeal to the League or Combination, but such appeal must be made within 7 days of the receipt of the notice from the Club. The notice terminating the Agreement must inform the Player of the reasons or grounds for such notice. The appeal shall be heard by the Management Committee within 10 days of the receipt of the notice from the Player. If either party is dissatisfied with the decision, there shall be a right of further appeal to the Appeals Committee of the League or Combination, but such appeal must be made within 7 days of receipt of the intimation of the decision of the Management Committee, and must be heard by the Appeals Committee within 10 days of the receipt of the Notice of Appeal. The League or Combination shall report to this Association when the matter is finally determined, and the Agreement and Registration shall be cancelled by this Association where necessary. Agreements between Clubs and Players shall contain a clause showing the provision made for dealing with such disputes and for the cancelling of the Agreements and Registrations by this Association. Clubs not belonging to any League or Combination before referred to may, upon obtaining the approval of this Association, make similar regulations; such regulations to provide for a right of appeal by either party to the County Association, or to this Association.

12. In the event of the Club failing to fulfil the terms and conditions of this Agreement the Player may, on giving fourteen days' notice to the Club, terminate this Agreement, such notice to be in writing. The Player must forward a copy of the notice to The Football Association and the Club shall have the right of appeal within seven days to The Football Association, which may either dismiss such appeal, or allow the same, and, if so, on such terms and conditions as it may think fit.

13. The following special provisions laid down by the Competitions in which the Player will complete are accepted by and will be observed by the Player:—

(a) It is hereby agreed by the Player that if he shall at any time be absent from his duties by reason of sickness or injury he shall, during such absence, be entitled to receive only the difference between the weekly wage he was receiving at the time of his sickness or injury and the amount he receives as benefit under the National Insurance Act, 1946, of The National Insurance (Industrial Injuries) Act, 1946, and for the purpose of this Clause his wages shall be deemed to accrue from day to day.

(b) If at any time during the period of this Contract of Service the payments herein agreed shall be in excess of the payments permitted to be paid by the Club to the Player in accordance with the Regulations of The Football League the payments to the player shall be the amount the Club is entitled to pay in accordance with such regulations and this Contract of Service shall be read and construed, as if it were varied accordingly.

(c) The Player agrees that he will not without the written permission of the Club grant interviews to nor write articles for newspapers or other publications nor take part in television or radio programmes and that he will submit such articles etc. to the Club for approval before allowing publication of the same.

14. Basic Wages.

£.....per week from.....to.....
 £.....per week from.....to.....
 £.....per week from.....to.....
 £.....per week from.....to.....
 £.....per week from.....to.....
 £.....per week from.....to.....
 £.....per week from.....to.....
 £.....per week from.....to.....

15. Other financial provisions:—

(Fill in as required).

16. Any other provisions:—

(Fill in as required).

17. In consideration of the observance by the said Player of the terms provisions and conditions of this Agreement, the said on behalf of the Club shall pay to the said Player the wages, bonuses and fees as provided hereinbefore and this Agreement (subject to the Rules of The Football Association) shall cease and terminate on the said 31st day of July Unless either

(a) This Agreement shall have previously been determined in accordance with the provisions of one or other of Clauses 10, 11 or 12 hereinbefore set forth; or

(b) The Club shall have by the first Saturday in May next preceding the said 30th day of June, by notice in writing to the Player continued this Agreement for a further period of (year/years) (hereinafter called "the further period") on the same or not less favourable terms as to remuneration as provided in Clauses 14 and 15 hereof respectively and otherwise on the same terms as are expressed in and by this Agreement but excluding this option provision and so that such further period shall not be for longer in extent than that of the initial period of employment.

18. If the Club shall in pursuance of Clause 17(b) hereof continue this Agreement for a further period then and in that event this Agreement shall continue in full force and effect as between the parties hereto and shall terminate on the last day of such further period unless either:

(a) This Agreement shall have been determined previously in accordance with the provisions of one or other of Clauses 10, 11 or 12 hereinbefore set forth; or

FORMS OF THE ASSOCIATION

(b) The Club shall have by the first Saturday in May next preceding the last day of the further period of service by notice in writing to the Player indicate that the Club requires to offer a further re engagement to the Player after the further period.

(c) If the Club shall have served notice on the Player of a renewed offer for his services, the Player shall then have the right to call upon the Club either to negotiate a new Contract of Service with him or to negotiate his transfer to another Club at an appropriate fee.

(d) The right of the Player given by Clause 18(c) hereof shall be exercised by him within 28 days of the notice given to him by the Club under Clause 18(b) hereof;

(e) In the event of the Club and the Player being unable by the last day of the further period to agree a new contract of service or to make arrangements for the transfer of the Player then either the Club or the Player shall be at liberty to exercise the rights of appeal contained in the Regulations of The Football League;

(f) Until an additional Contract of Service between the Club and Player becomes operative or the Player is transferred, either prior to or as the result of the determination of an appeal from either the Club or the Player, the Player's Contract of Service shall, after the Club shall have served notice on him under Sub-Clause 18(b) hereof be deemed to continue and have full force and effect between the parties thereto on the same terms as to remuneration and conditions of service as those obtaining prior to the expiration of the previous period of employment.

As Witness the hands of the said parties the day and year first aforesaid.

Signed by the said.....	}
.....and.....		
.....		
in the presence of		
(Signature).....	}
(Occupation).....		
(Address).....		
		(Secretary)

(Source: the Football Association Handbook, Season 1981/2)

FOOTBALL LEAGUE CONTRACT

AN AGREEMENT made the day of 19
between (name)
of (address)
.....
the Secretary/Manager/Chairman of and acting pursuant to Resolution and Authority for and on
behalf of
Football Club Limited (hereinafter referred to as "the Club") of the one part and
(name)
of (address)
.....
a Registered Association Football Player (hereinafter referred to as "the Player")

WHEREBY it is agreed as follows:—

1. This Agreement shall remain in force until the 31st day of July 19
unless it shall have previously been terminated by substitution of a revised agreement or
as hereinafter provided.
2. The Player agrees to play to the best of his ability in all football matches in which
he is selected to play for the Club and to attend at any reasonable place for the purpose
of training in accordance with instructions given by any duly authorised official of the
Club.
3. The Player agrees to attend all matches in which the Club is engaged when directed
by any duly authorised official of the Club.
4. The Player shall play football solely for the Club or as authorised by the Club or as
required under the Rules and Regulations of the Football Association and the Football
League. The Player undertakes to adhere to the Laws of the Game of Association Football
in all matches in which he participates.
5. The Player agrees to observe the Rules of the Club at all times. The Club and the
Player shall observe and be subject to the Rules and Regulations of the Football Association
and the Football League. In the case of conflict such Rules and Regulations shall take
precedence over this Agreement and over the Rules of the Club.
6. The Club undertakes to provide the Player at the earliest opportunity with copies
of all relevant Football Association Rules, Football League Regulations, the Club Rules
for players and any relevant insurance policy applicable to the Player and to provide him
with any subsequent amendments to all the above.

7. The Player shall not without the written consent of the Club participate professionally in any other sporting or athletic activity. The Player shall at all times have due regard for the necessity of his maintaining a high standard of physical fitness and agrees not to indulge in any sport, activity or practice that might endanger such fitness. The Player shall not infringe any provision in this regard in any policy of insurance taken out for his benefit or for the benefit of the Club.
8. Any incapacity or sickness shall be reported by the Player to the Club immediately and the Club shall keep a record of any incapacity. The Player shall submit promptly to such medical and dental examinations as the Club may reasonably require and shall undergo, at no expense to himself, such treatment as may be prescribed by the medical or dental advisers of the Club in order to restore the Player to fitness. The Club shall arrange promptly such prescribed treatment and shall ensure that such treatment is undertaken and completed without expense to the Player notwithstanding that this Agreement expires after such treatment has been prescribed.
9. Subject to the provisions of Clause 10, in the event that the Player shall become incapacitated by reason of sickness or injury the Club shall, unless special provision for extra payment be set out in the Schedule to this Agreement during the period of incapacity, pay to the Player his basic wage as specified in the Schedule without reduction for any State sickness or injury benefit that he may receive.
10. In the event that the Player shall suffer permanent incapacity the Club shall be entitled to serve a notice upon the Player terminating the Agreement. The Player's minimum entitlement shall be to receive 6 months' notice where the Agreement has not more than 3 years to run with an extra month's notice for each year or part year in excess of the said 3 years, provided that the parties shall be able to negotiate a longer period of notice if they so wish.
- The notice may be served at any time after:—
- (a) the date on which the Player is declared permanently totally disabled in a case where the Player suffers incapacity within the terms of the Football League Personal Accident Insurance Scheme; or
 - (b) in any other case, the date on which the incapacity is established by independent medical examination.
11. (a) The Player shall not reside at any place which the Club deems unsuitable for the performance of his duties under this Agreement.
- (b) The Player shall not without the previous consent of the Club be engaged either directly or indirectly in any trade, business or occupation other than his employment hereunder.
12. The Player shall be given every opportunity compatible with his obligations under this Agreement to follow courses of further education or vocational training if he so desires. The Club agrees to give the Footballers' Further Education and Vocational Training Society particulars of any such courses undertaken by the Player.
13. The Player shall permit the Club to photograph him as a member of the squad of players and staff of the Club provided that such photographs are for use only as the official photographs of the Club. The Player may, save as otherwise mutually agreed and subject to the overriding obligation contained in the Rules of the Football Association not to bring the game of Association Football into disrepute, contribute to the public media in a responsible manner. The Player shall, whenever circumstances permit, give to the Club reasonable notice of his intention to make such contributions to the public media in order to allow representations to be made to him on behalf of the Club if it so desires.
14. (a) The Player shall not induce or attempt to induce any other Player employed by or registered by the Club, or by any other Football League Club, to leave that employment or cease to be so registered for any reason whatsoever.

- (b) The Club and the Player shall arrange all contracts of service and transfers of registration to any other Football Club between themselves and shall make no payment to any other person or agent in this respect.
15. No payment shall be made or received by either the Player or the Club to or from any person or organisation whatsoever as an inducement to win, lose or draw a match except for such payments to be made by the Club to the Player as are specifically provided for in the Schedule to this Agreement.
16. If the Player shall be guilty of serious or persistent misconduct or serious or persistent breach of the Rules of the Club or of the terms and conditions of this Agreement the Club may on giving fourteen days' notice to the Player terminate this Agreement in accordance with the Rules of the Football Association and the Regulations of the Football League and the Club shall notify the Player in writing of the full reasons for the action taken. Such action shall be subject to the Player's right of appeal (exercisable within seven days of the receipt by the Player of such notice and notification of reasons from the Club) as follows:—
- (a) he may appeal to the Management Committee who shall hear the appeal within fourteen days of receipt of the notice of appeal.
 - (b) either the Club or the Player may appeal against the decision of the Management Committee to the Football League Appeals Committee and such further appeal shall be made within seven days of the receipt of the Management Committee's decision and shall be heard within fourteen days of receipt of the notice of the further appeal.
- Any such termination shall be subject to the rights of the parties provided for in the Regulations of the Football League. The Club may at its discretion waive its rights under this Clause and take action under the provisions of Clause 18.
17. If the Club is guilty of serious or persistent breach of the terms and conditions of this Agreement the Player may on giving fourteen days' written notice to the Club terminate this Agreement. The Player shall forward a copy of such notice to the Football League and to the Football Association. The Club shall have a right of appeal as set out in Clause 16(a) *mutatis mutandis* (exercisable within seven days of the receipt by the Club of such notice from the Player) and the Club or the Player as the case may be shall have a further right of appeal as set out in Clause 16(b).
18. If the Player is guilty of misconduct or a breach of any of the training or disciplinary rules or lawful instructions of the Club or any of the provisions of this Agreement the Club may either impose a fine not exceeding two weeks' basic wages or order the Player not to attend at the Club for a period not exceeding fourteen days. The Club shall inform the Player in writing of the action taken and the full reasons for it and this information shall be recorded in a register held at the Club. The Player shall have a right of appeal as set out in Clause 16(a) (exercisable within seven days of the receipt by the Player of such written notification from the Club) and the Club or the Player as the case may be shall have a further right of appeal as set out in Clause 16(b) of this Agreement. Any penalty imposed by the Club upon the Player shall not become operative until the appeals procedures have been exhausted.
19. In the event of any grievance in connection with his employment under this Agreement the following procedures shall be available to the Player in the order set out:—
- (a) the grievance shall be brought informally to the notice of the Manager of the Club in the first instance,
 - (b) formal notice of the grievance may be given in writing to the Manager of the Club,
 - (c) if the grievance is not settled to the Player's satisfaction within fourteen days

thereafter formal notice of the grievance may be given in writing to the Secretary of the Club so that it may be considered by the Board of Directors or Committee of the Club or by any duly authorised committee or sub-committee thereof. The matter shall thereupon be dealt with by the Board or Committee at its next convenient meeting and in any event within four weeks of receipt of the notice,

- (d) if the grievance is not settled by the Club to the Player's satisfaction the Player shall have a right of appeal as set out in Clause 16(a) (exercisable within seven days of the Club notifying the Player of the decision of the Board or Committee) and the Club or the Player as the case may be shall have a further right of appeal as set out in Clause 16(b) of this Agreement.

20. The Player may if he so desires be represented at any personal hearing of an appeal under this Agreement by an official or member of the Professional Footballers' Association.

21. Upon the execution of this Agreement the Club shall effect the Registration of the Player with the Football Association and the Football League in accordance with their Rules and Regulations. Such Registration may be transferred by mutual consent of the Club and the Player during the currency of this Agreement and this Agreement will be deemed to be terminated (but not so as to affect accrued rights) on the Registration by the Football League of such transfer.

22. The Regulations of the Football League as to the re-engagement and transfer of a registration shall apply to the Club and Player both during the currency and after the expiration of this Agreement.

23. The remuneration of the Player shall be set out in a Schedule attached to this Agreement and signed by the parties. The Schedule shall include all remuneration to which the Player is or may be entitled. In the event of any dispute the remuneration set out in the Schedule shall be conclusively deemed to be the full entitlement of the Player.

24. The Player shall be entitled to a minimum of four weeks' paid holiday per year, such holiday to be taken at a time which the Club shall determine. The Player shall not participate in professional football during his holiday.

25. Reference herein to Rules, Regulations or Bye-laws of the Football League, the Football Association, the Club and any other body shall be treated as a reference to those Rules, Regulations or Bye-laws as from time to time amended.

26. All previous agreements between the Club and Player are hereby cancelled.

As witness the hands of the said parties
the day and year first aforesaid.

Signed by the said
and (Player)

in the presence of
(Signature) (Secretary/Manager/Chairman)

(Occupation)

(Address)

.....

SCHEDULE

- a) The Player's employment with the Club began on the19.....
- either b) The Player's previous employment with
which began on 19 shall count as part of
the Player's continuous period of employment hereunder.
- or b) No employment with a previous employer shall count as part of the Player's continuous
period of employment hereunder.
- c) The Player shall become or continue to be and during the continuance of his
employment hereunder shall remain a member of The Football League Players' Benefit
Scheme (and a member of the
Pension Scheme) and as such (in the latter case shall be liable to make such contributions
and in each case) shall be entitled to such benefits and subject to such conditions as
are set out in the definitive Trust Deed or Rules of the Scheme.
- d) A contracting out certificate is not in force in respect of the Player's employment
under this Agreement.
- e) Basic Wage.

£..... per week from.....to.....

£..... per week from.....to.....

£..... per week from.....to.....

£..... per week from.....to.....

£..... per week from.....to.....

£..... per week from.....to.....

£..... per week from.....to.....

£..... per week from.....to.....

f) Any other provisions:—

Signed by the said
and
in the presence of
(Signature)
(Occupation)
(Address)
.....

.....
(Player)
.....
(Secretary/Manager/Chairman)

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STATUTES

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